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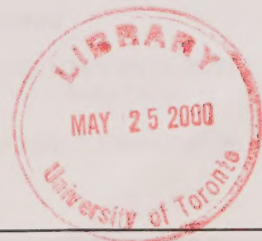
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NUMBER 45

OFFICIAL REPORT  
(HANSARD)

Friday, April 7, 2000

THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE*





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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Friday, April 7, 2000

The Senate met at 9:00 a.m., the Speaker *pro tempore* in the Chair.

Prayers.

### SENATOR'S STATEMENT

#### WORLD WAR I

##### ANNIVERSARY OF ASSAULT ON VIMY RIDGE

**Hon. J. Michael Forrestall:** Honourable senators, April 9 is a very important date in this country's history. It was that day that, in the minds of many, Canada became a nation — a state.

On that fateful day in 1917, following the bloody Battles of the Somme, the Canadian Corps launched an Easter Monday bombardment of Vimy Ridge and then assaulted that historic position. The entire Canadian Corps of four divisions was thrown at a seemingly impregnable German position in a small corner of France.

Their commander was none other than a future Governor General of our country, Lord Byng of Vimy, a controversial figure in Canadian history but a talented field commander by First World War standards. It is not well known, but Byng was a boyhood friend of King George V. The King went to Europe during the war to visit Byng in the trenches. After several hours of walking through the mud, which must have been a sobering experience for His Majesty, the King asked Byng if he had anything to eat. "Yes", Byng replied, as he pulled out a several-days-old, green-with-mold sardine sandwich, unwrapped it, and offered it to His Majesty. They shared the sandwich and a bit of coffee. It is said that the King later told his wife, "Binkie did not live — he pigged." It was a simple soldier's meal for an extraordinary man. He was a great general with whom the Canadian troops got along very well. Indeed, it was his popularity as a field commander that landed him the appointment as Governor General of our country.

"Byng's Boys," in four divisions, went straight up Vimy Ridge after a successful artillery barrage, with the 1st, 2nd and 3rd divisions arranged south to north. These three divisions moved forward with relative ease, but the 4th division in the northern sector got bogged down on Hill 145, taking many casualties.

By the end of day, the Canadians held most of Vimy Ridge. By the end of the battle, Vimy Ridge and a high point, "the Pimple," were in Canadian hands. This victory came at the cost of 3,598 killed and 7,004 wounded.

Many before had tried unsuccessfully to do what the Canadians accomplished. It was the Canadians who stormed

Vimy Ridge, and we held it in what is thought to be Canada's greatest victory of that war.

Nothing could say this better than the plaque at the base of the Peace Tower, which reads:

They are too near  
To be great  
But our Children  
Shall understand  
Where and how our  
Fate was changed  
And by whose hand.

[Translation]

## ROUTINE PROCEEDINGS

### SCRUTINY OF REGULATIONS

BUDGET REPORT OF JOINT COMMITTEE PRESENTED AND PRINTED

**Hon. Sheila Finestone**, on behalf of Senator Hervieux-Payette, Joint Chair of the Standing Joint Committee for the Scrutiny of Regulations, presented the following report:

Friday, April 7, 2000

The Standing Joint Committee for the Scrutiny of Regulations has the honour to present its

#### SECOND REPORT

("A" presented only for the Senate)

Your committee, which is authorized by section 19 of the Statutory Instruments Act, R.S.C. 1985, c. S-22, to review and scrutinize statutory instruments, now requests approval of funds for 2000-2001.

Pursuant to section 2:07 of the "Procedural Guidelines for the Financial Operation of Senate Committees," the budget submitted to the Standing Committee on Internal Economy, Budgets and Administration and the report thereon of that committee are appended to this report.

Respectfully submitted,

CÉLINE HERVIEUX-PAYETTE  
Joint Chair

(For text of report, see today's Journals of the Senate, p. 485.)



**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Finestone, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

• (0910)

## LEGAL AND CONSTITUTIONAL AFFAIRS

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Lorna Milne:** Honourable senators, I give notice that on Monday, April 10, 2000, I shall move:

That the Standing Senate Committee on Legal and Constitutional Affairs have the power to sit at 3:30 in the afternoon, on Wednesday, April 12, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

## QUESTION PERIOD

### THE SENATE

#### ABSENCE OF LEADER OF THE GOVERNMENT

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, as the Leader of the Government in the Senate is unavoidably absent today, I will be pleased to take any questions as notice.

### BUSINESS OF THE SENATE

**Hon. Lowell Murray:** Honourable senators, the deputy leader need not take this question as notice, as it is a question for him, as Deputy Leader of the Government.

In view of the fact that we have just had a notice of motion from our friend Senator Milne, to the effect she will be bringing a motion to permit the Legal and Constitutional Affairs Committee to sit next Wednesday even though the Senate may be sitting, what will be the position of the government with regard to that motion?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, as an observation, the purpose for a notice of motion, as opposed to going directly to the motion, is to allow time to reflect on the motion, so I will not prejudge this side's position on that matter. However, I will make the comment, in response to Senator Murray, that the Legal and Constitutional Affairs Committee that Senator Milne chairs is considering an important government bill and our position may well be to agree that this committee should sit.

By my comment yesterday relating to Notices of Motions — and I gather that procedure is new and novel in the Senate — we may be introducing a notice to allocate time in order to facilitate the final vote on third reading of Bill C-9. There is no point in debating that until just before the time we hope it would be voted on.

This procedure has prompted some of the committees that would normally sit on the day in which we will take time to debate the motion for time allocation to give notice to sit while the Senate is sitting. If time allocation is accepted by this chamber, then I gather we will go directly to debate the matter for which time is allocated.

Again, I am just describing, as much for myself as other senators, how I see this issue playing out. Wednesday will be an important sitting day. Time allocation may be the overriding consideration in terms of not agreeing to any committee sitting at that time. However, in that the bill in question is an important matter of government business, I am considering our position. It may well be that we should give consent.

The other committees sitting I do not believe have government businesses before them. However, we will see if notice is put down or leave is requested for them to sit, as well. As I said yesterday, if too many committees are sitting when the Senate sits, this is an imposition on the Senate and one we would not want to see occur.

**Senator Murray:** Honourable senators, I understand the process. Yes, the Standing Senate Committee on Legal and Constitutional Affairs has an important government bill before it. It is so important that quite a number of us wish to attend. We want to be there for the next meeting of that committee because, among other witnesses, I understand the Chief Electoral Officer of Canada will be present. At the same time, the Senate is considering two extremely important bills, Bill C-9, the Nisga'a treaty, and Bill C-20.

**Senator Kinsella:** A bill of the utmost gravity.

**Senator Murray:** A bill, as my friend Senator Kinsella reminds us, of the utmost gravity, Bill C-20, the so-called clarity bill. There are very few senators in this place who do not wish to be present in the chamber when those debates are taking place. The attendance here and the participation in those debates demonstrates the extraordinarily high level of interest in this place in those bills.

Therefore, I am not inclined to support the motion when it comes before us for the simple reason that it will make it impossible for a great many honourable senators, not just myself, to give the attention they wish to give to all of these matters.

I suppose the deputy leader has answered my other question, which was to know what his attitude would be if others among us were to bring forward notices of motions to allow their committees to sit while the Senate is sitting.



**Senator Hays:** Senator Murray has made some very good arguments. When we debate the motion, we will hear from other senators and following that we shall decide. I think it is premature to deal with the motion now. However, the question is proper and I have given the best answer I can at this time.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my question is to the Deputy Leader of the Government in the Senate. I am concerned about his expectation with respect to the discussions on the number of days to finish the work of the Senate on Bill C-9.

The process envisaged is outlined in rule 39(1) that speaks to negotiations and an attempt by the two sides to reach an agreement. The deputy leader said that it is his expectation today that no agreement will be reached.

If the Deputy Leader of the Government is entering into negotiations with the expectation that they will not get anywhere, what kind of negotiations are they? I do not believe they are the kind of negotiations envisaged in rule 39(1). Rule 39(1) expects that every attempt will be made to reach an agreement. There is no expectation of failure. Otherwise, why would the rule ask for the seeking and acquiring of an agreement?

I wish to put on the record and ask the deputy leader if he wishes to rephrase his statement. Otherwise, his statement seems to obviate any discussion at all.

We have a "pre-notice" of a notice of motion, which is novel. I would hope that this is a sign that we will become more creative in this place. However, we must be careful about some of the novel ideas brought forward.

This side has put a proposition forward on what we consider to be the number of days necessary so that all the senators that we know who wish to speak will have an opportunity to speak on this matter. We are still waiting for a response to the last question.

• (0920)

**Senator Hays:** Honourable senators, I thank Senator Kinsella for this opportunity to comment further. I appreciate his acknowledgement that we are in negotiations, as anticipated in rule 39, to try to determine a date on which we will finish our debate and go to vote or votes on Bill C-9, the Nisga'a bill.

As I have indicated, I intend to proceed with a time allocation motion next week because, in fairness to senators working on committee matters, they should know in advance. It is inappropriate to simply surprise senators the day before, particularly when an important day like Wednesday next will be affected by what happens.

Senators may comment to me in the chamber or directly as to the appropriateness of that approach. I think it is and that is why I proposed it.

I wish to address the other part of the senator's question, that I have prejudged the conclusion of our negotiations, or that I am simply being obstinate or will be obstinate. I do not intend to be. I intend to pursue with him every means possible to arrive at a final agreement, and if that happens, all the better.

At the present time, we are, in my view, of sufficient distance apart that I think it is fair to anticipate this alternative. I will not comment further on the negotiations because it may be damaging to the process.

That, honourable senators, is my response.

## PUBLIC WORKS AND GOVERNMENT SERVICES

### ALLEGED INVOLVEMENT OF PRIME MINISTER'S OFFICE IN PURCHASE OF PROPERTY IN HULL, QUEBEC

**Hon. Marjory LeBreton:** Honourable senators, I regret that the Leader of the Government in the Senate is not here today as he could, perhaps, shed some light on the question I am about to ask.

Honourable senators, in today's *National Post*, there is a very troubling story involving the Prime Minister's Office, the Prime Minister's Chief of Staff, several of his ministers, the head of his election strategy group, and an Ottawa lobbyist who is a personal friend and golf buddy of the Prime Minister.

This story is about the government efforts to purchase an office building in Hull from a well-known Liberal businessman, Pierre Bourque, Sr. It appears that Mr. Bourque, Sr. has some special connections with some or all of the above people because a flurry of activity has been going on behind the scenes on his behalf.

The story reports that Mr. Bourque gave a "substantial sum" of money to the Prime Minister's 1990 leadership campaign, but has since fallen on hard times. He told the *National Post* he needed to make \$8.3 million on the sale of the Place Louis St. Laurent Building in Hull in order to get out of personal debt.

The most shocking element in this tale of woe is that in mid-February Mr. Bourque met with Mr. John Rae, who is head of Mr. Chrétien's election strategy committee. Mr. Rae confirmed that "he gave Mr. Bourque money to help him with his financial problems."

This is exactly what he said:

I have known him for a long time. We are not intimate friends at all... It is not a secret that he has had some financial difficulties and I did give him some assistance.

My question is: What is going on here? Why would one of the Prime Minister's closest confidants feel it necessary to give money to Mr. Bourque? One can only imagine that it must have been a tidy sum.



**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senator, as I indicated, I am not in a position to answer for the government. Accordingly, I will take the question as notice and the honourable senator will hear from the Leader of the Government on Monday.

**Senator LeBreton:** Honourable senators, I have a supplementary question. In the same story, it appears that several ministers resisted the pressures of the Prime Minister's Office, Mr. Gagliano and the Prime Minister's lobbyist friend to go along with this deal, but several others supported the buying of this building at an apparently inflated price. According to the *National Post*, those ministers who supported this purchase were the Minister of Justice, the Solicitor General of Canada and the Leader of the Government in the Senate.

My question then to the Leader of the Government in the Senate, which I will ask again on Monday, is: Why all this effort to relieve Mr. Bourque of his financial problems? Further, why is the government buying buildings? If this building is of such value, it surely could be sold within the private sector. Something is very wrong here.

**Senator Hays:** Honourable senators, I take notice of that supplementary question as well.

## NATIONAL DEFENCE

### YUGOSLAVIA—ROTATION OF PEACEKEEPING SOLDIERS HOME—PROBLEMS OF RETURN FLIGHT

**Hon. J. Michael Forrestall:** Honourable senators, the deputy leader might just as well have a full mail bag as a partially full one.

My question is for Senator Boudreau, who is obviously away on what must be very important government business.

I am told that when Canadian soldiers were rotated home in December, they were sent to Macedonia to catch their flight. I am also told that when they arrived there, their contracted flight had not arrived. It had broken down or been fogged in somewhere along the way. The Canadian soldiers were left abandoned on an airfield without food, shelter, or a place to sleep. I am told that the Canadian Forces support element there could not help these peacekeepers because they did not have the people, supplies or facilities.

The American military, through the good graces of an unknown U.S. colonel — and I would like to meet that man to

thank him — fed them, sheltered them overnight and sent them home the following day.

Will the minister give us an assurance that this type of event will not happen again, that there will not be this abandonment of peacekeeping troops on their way home for Christmas?

Canadian soldiers do not deserve this treatment, particularly after having served in a theatre of war. We have other peacekeepers coming home. We would like assurance that those coming home, for example, from Kosovo, in a few months' time, will have an expeditious and safe trip back to Canada.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, on behalf of the Leader of the Government in the Senate, I will take note of that important question.

## BUSINESS OF THE SENATE

**Hon. Donald H. Oliver:** Honourable senators, my question is supplementary to Senator Murray's question.

In response to Senator Murray's initial question, the Deputy Leader of the Government said that the Legal Affairs Committee has before it an important piece of government legislation. The Senate Banking Committee also has a piece of government legislation before it. I was wondering if, in keeping with the response he gave to Senator Murray, Senator Hays could indicate the priority ranking he uses for committees with government legislation before them. Is it that the government legislation before the Banking Committee does not have the same priority as that before the Legal Affairs Committee? How does he rank the legislation before the other committees that will be meeting next Wednesday?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, according to the list five committees are meeting. Legal and Constitutional Affairs is not the only one dealing with government business.

It is not that any particular study of a bill is more important than any other. The rules do recognize, however, the priority of government legislation; I think appropriately so. If the Banking Committee gives a notice of motion requesting permission to sit while the Senate is sitting, then we will have to decide the question. If there is a position on this side to grant leave for a committee to sit when the Senate is sitting, then we will have to decide, first, in response to Senator Murray's question, if we should do it at all. If we do it, then should it be done on a blanket basis or on a selective basis?

• (1930)

I will not prejudge the outcome now, but I do appreciate that the honourable senator has drawn to our attention that we are dealing with not just one committee but several committees. That is my best answer at this time. A full answer will not be available until we actually deal with the motion or motions requesting leave.



## FOREIGN AFFAIRS

## LEVEL OF PAY FOR FOREIGN SERVICE OFFICERS

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government. At one point in my career, I worked in the Department of Foreign Affairs and International Trade. I also have several former students who are now foreign service officers and whose careers I follow. Thus, I am in a position to confirm that Canada's foreign service officers are paid at too low a level relative to current market conditions. Foreign service officers are so concerned about this that they have taken the remarkable step of publicly expressing their dissatisfaction. Will the government undertake to review this matter and make an offer that is commensurate with current market conditions, so that those highly trained and deeply committed persons who work at home and abroad to advance Canada's worldwide interests will be paid at a level corresponding to their value to Canada?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, on behalf of the Leader of the Government, I will take notice of that question concerning these important public servants.

**Hon. Marcel Prud'homme:** Honourable senators, I wish to make a suggestion. Many years ago, I had the honour of chairing the Foreign Affairs Committee — in fact, I held that position for over 12 years. We had some similar problems and, at one point, The Honourable Barbara McDougall appeared as a witness before that committee. It helped the relationship thereafter when the representative of the union appeared before the Foreign Affairs Committee. Perhaps, this would be a splendid occasion for the Foreign Affairs Committee to call on these people to bring together the best, most knowledgeable group of people to exchange ideas. In so doing, it would go a long way in meeting the request of my friend and colleague, Senator Roche.

**Senator Hays:** Honourable senators, I will ensure that the suggestion offered by the honourable senator regarding how to deal with differences that arise between the government and these valued public servants is passed on to the government through the Leader of the Government in the Senate.

## BUSINESS OF THE SENATE

**Hon. Lowell Murray:** Honourable senators, the intervention of our friend Senator Prud'homme in Question Period reminds me that he will be accompanying the Prime Minister on his visit to the Middle East next week. That leads me to inquire what other honourable senators may be travelling with the Prime Minister or joining him during this tour of Middle East countries.

I hasten to assure my honourable friend that, having travelled extensively in that area on numerous occasions, I am not seeking a seat on the plane myself.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I do not know the answer to the question posed by the Honourable Senator Murray other than to say that,

besides Senator Prud'homme, Senator Kolber mentioned to me that he will also be accompanying the Prime Minister. As to the others who will be accompanying him, I do not know.

## FOREIGN AFFAIRS

LEVEL OF PAY FOR FOREIGN SERVICE OFFICERS—  
UNION NEGOTIATIONS—DISPARITY BETWEEN OFFERS  
TO SENIOR AND JUNIOR STAFF

**Hon. A. Raynell Andreychuk:** Honourable senators, I have a supplementary question to Senator Roche's question. Would the Leader of the Government obtain an explanation as to why there is such disparity between the offer being given to the middle- and first-class staff in the Foreign Affairs Department and the offer that the senior levels within the foreign service are receiving?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, as I have done with the other questions, I shall take notice of that question as well.

## ORDERS OF THE DAY

## POINT OF ORDER

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, yesterday we had an exchange on a question that relates to rule 37(4) of our rules, which states:

37(4) Except as provided in sections (2) and (3) above, —

Sections (2) and (3) relate to movers of bills and the leaders of the government and opposition. The rule goes on to state:

— no Senator shall speak for more than fifteen minutes, inclusive of any question or comments from other Senators which the Senator may permit in the course of his or her remarks.

The issue that I raise as a point of order and the issue on which I request a ruling is the following, namely, is it out of order for a senator to put a condition on consent? As senators in this place will have noticed, from time to time I have stood when consent has been requested and have said that consent is granted for a period of time. In fact, on the important speeches on Bill C-9 and Bill C-20 — and, I am in discussions with my counterpart on this — the time provided for in the rules is inadequate. I think the rule should be half an hour. However, as a matter of course, I simply wished to extend the time for 15 minutes.

When I attempted to do that in respect to Senator Sibbeston's speech yesterday, the question arose that it was not in order to do so. I do not have a lot to say about that. There is contained in the record of this house comments from both sides, both for and against. However, there is, perhaps, a relevant reference in *House of Commons Procedure and Practice*, a recently published book by Robert Marleau and Camille Montpetit. At page 498, it states:

During debate, unanimous consent has been sought to extend **briefly** the length of speeches or the length of the questions and comments period following speeches; to permit the sharing of speaking time; to permit a Member who has already spoken once to a question to make additional comments; and even to alter the usual pattern of rotation of speakers.

That reference explains the practice in the House of Commons. Of course, one of the differences between our two Houses is that the Speaker plays a larger role in the operations of the House of Commons than the Speaker in the Senate plays here. However, the Speaker's discretion to extend speaking time would be the same, except that senators, who are normally more involved in the operations of the house, would be directly involved.

I will repeat briefly my argument of yesterday, that it is in the interest of order to have reasonable limits on speeches. That is why the rule provides for a limit. However, when you are dealing with a limit that is not a reasonable one, and given the nature of the excellent debate in which we have been involved, on Bill C-9 and Bill C-20, I think it is most appropriate that time be extended, which has been the practice by independent senators, senators in opposition, as well as senators on the government side.

• (1940)

Should that be unlimited? I do not think so. In other words, it is akin to an on-off switch; there must be some discretion. That is my argument as to the order of what I am trying to do, and as I have done on other occasions, in saying that consent to continue is granted and agreed to, but for a period of time.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, in response to the point raised by the Deputy Leader of the Government in the Senate, I wish to make several points.

Perhaps honourable senators wonder from time to time why the opposition rises — perhaps too often in their view — to cite the rules. The reason for that, honourable senators, is that the minority has only one major shield and that is found in the rules. Without the rules, the tyranny of the majority could undermine us. That, honourable senators, has been the principle: to protect the minority from the tyranny of the majority. In our system, the rules and procedures provide that shield. That is why the rules are so very important.

I agree with Senator Hays in terms of the problem vis-à-vis the length of speeches. Clearly, we must do something about it. The matter has come up at meetings of the advisory committee, chaired by the Speaker. It is in the common interest of both the opposition and the government to address this matter. The manner in which this should be addressed, in my view, is to challenge the Rules Committee to study the matter.

If the Rules Committee were to study the issue, which is my second point, it might wish to refer to the standing orders of the House of Lords. In those standing orders on the matter of leave

of the House, there are a couple of interesting things that happen. It is their practice that a lord will rise and attempt to canvass whether, if he or she were to seek leave, leave would be forthcoming. They do an assessment during that canvassing of whether there would be some opposition.

If they feel there would be opposition, their practice is to not ask for leave. It is a highly urbane and civil way of proceeding. The House of Lords proceeds through that kind of exploration, through what they call the "usual channels", and they try to solve problems. If this matter went to the Rules Committee, members might take that into consideration.

The House of Lords also makes a distinction between those matters in which leave is sought to be approved by the majority and matters in which leave must be approved by unanimous consent. For example, leave to make ministerial or personal statements can be granted by a simple majority in the House, whereas leave to move amendments or clauses en bloc requires the unanimous consent of the House.

That brings me to my third point, which is our rule. On page 4, rule 4(6) gives the definition of "Leave of the Senate" as "leave granted without a dissenting voice." As far as the request that the chair provide an interpretation of our rules, attention must go to rule 4(6).

That rule, as it would apply to leave to extend the time set down in the rules for speeches, means that either the rule is maintained or it is not maintained. The chair would need to follow the basic rules of logic in the analysis. The basic rule of logic that applies in this case, I submit, is the distinction between propositions that stand in contradiction one to the other as compared to propositions that stand in contrary opposition to each other.

Rule 37(4) states that a senator can speak for 15 minutes. The granting of leave would mean that the rule does not apply. In other words, it is the contradiction of the rule. To allow for a change that says one can speak not for 15 minutes but for 20 minutes or 30 minutes is an opposition that is a contrary opposition. The rules would need to provide for that difference. The interpretation of the rules that are now before us can only provide for a judgment of non-contradiction.

**Senator Hays:** Honourable senators, I have a final reply to the positions taken by Senator Kinsella, which I noted and were well put. With respect to his latter point on matters in contradiction and matters in contrary opposition, I submit that the practice of the Senate in granting leave has been such that the rigidity of the approach suggested by Senator Kinsella should not apply, in my opinion.

**Hon. Eymard G. Corbin:** Honourable senators, I do not wish to repeat my remarks from yesterday found at page 1007 of the *Debates of the Senate*. However, I certainly want to support the argumentation advanced by the Deputy Leader of the Government in the Senate, Senator Hays. It makes eminent sense.



I am certainly open to having this matter referred to the Rules Committee. I think the 15-minute limit rule is imperative in the way it is written.

The companion to the *Rules of the Senate* of Canada is a document that was produced by the Rules Committee in 1994, when Senator Brenda Robertson was the Chair. This document is on the Table not as an official document but as a reference document, for those who wish to read it from time to time. It is revealing, in my opinion, that when you come to the rule in question, there is hardly any commentary or history.

• (0950)

The only historical comment is that, previously, senators had unlimited time to make their speeches. That in itself, in a situation of tension and crisis in the chamber, as we have experienced in the past, opens up the opportunity for filibustering and what have you. I will not comment on filibustering per se. It has been used in the Canadian Parliament from time to time. Is it good or bad? That is for individuals and for us collectively to decide. However, in times of crisis, it is a tool available for members opposite, for the minority.

I come back to the rule as written today. I find it limiting. I did so from the very moment it was tabled in this place. Fifteen minutes in most cases and certainly for slow speakers, of which I am one, is not sufficient time. Other people do very well within the 15-minute time limit. An exemplary senator in that respect is Senator Beaudoin. He makes his point logically, rationally, finishes his statement and sits down. He usually does it within 15 minutes. Other senators cannot do it on other topics.

I, for one, am open to extending that time limit to something in the range of 20 minutes.

Honourable senators, let us come back to the here and now and today. I think that in the minds of most senators sitting in this chamber right now, when we hear a request or when we hear the Speaker asking if the senator who has the floor wishes extended time, we understand the request to be, "May I finish reading my notes or finish my comments?" That is the common-sense understanding, I am sure, of most senators here today. That is the way I have always understood the process. I find it highly reasonable that when I request extended time, I am making a request to finish my speech. I am not looking for an opportunity to carry on forever. I am not asking that we open the door to unlimited questions and answers following my speech. I am simply asking for a little extra time to finish my comments. I think that is what we all understand. To go beyond that understanding is to go beyond the extension of a very normal courtesy to the senator who has the floor.

Honourable senators, I would request of the Chair that it take into consideration that general sentiment, that feeling and that context. I think that is the very heart of the matter. It is a matter of courtesy and nothing else.

**Hon. Lowell Murray:** Honourable senators, I had not intended to intervene in this discussion, and I have not really

prepared myself as I would have liked by referencing the record with regard to rules changes in this place. However, let me speak for a few minutes from memory in a way that I trust may assist honourable senators who were not here when the major changes in our rules were made in the early 1990s. Let me remind those who were here of the situation that obtained in this place prior to those major rule changes.

The fact of the matter is that there were really no rules limiting anything in the Senate. The government did not have the right, as it has in almost every parliamentary body with which I am familiar, to decide what the order of the day would be. The government had no ability to bring forward government business. The opposition could, by means of filibuster and other tactics, take up all the time, the entire day, in a way that prevented the government ever from getting to its business. I do not think that the present government or anyone here wishes to return to that state of affairs. The government should have the right to place its business before the legislature.

At the time that we brought in the rules to change that situation, there were the most extreme statements made on the opposition side — comparisons to the Soviet Union and the gulag and whatever else. However, the government presently in office has come to see the wisdom of many of those changes.

As well, there was no limit on such matters as discussion of petitions. The idea that you placed a petition on the Table and sat down was set aside for many months during the GST debate. Petitions were read in detail and speeches were made thereon. There was no time limit on the Question Period — no limit at all. It could and did go on for hours. This may be somewhat understandable when there are three or four ministers, or even one minister with a portfolio. It is frankly an absurdity when there is only one minister in this place and he is not carrying any portfolio other than that of Leader of the Government in the Senate. As well, there was no limit, as my honourable friends know, on the duration of speeches. There was no provision in our rules to bring a debate to an end — no closure, no time allocation provision.

The rules that were adopted in the early 1990s contained all of those provisions. Routine Proceedings were established and Orders of the Day, which lets the government bring its business before the legislature, as it should be able to do. A time limit was placed on Question Period. A time limit was placed on speeches. The hours of sitting were also regulated.

Honourable senators, if we are reconsidering the rules, we might well reconsider whether we need limits on speeches. Perhaps we went too far by placing a time limit on speeches because we have all these other tools at our disposal now. We have Routine Proceedings. The government side has the ability to bring its business forward. There are time allocation provisions in the rules. Perhaps we do not really need a time limit on speeches and we can get along without it, unless and until a majority of this place feels that the right is being abused, in which case they have these other corrective measures in the rules.

**Hon. Herbert O. Sparrow:** Honourable senators, I do not wish to prolong this discussion. We have the rules. When we require leave, leave has been granted, basically forever, for those people who have wanted to speak a little longer. I mentioned yesterday that I have not seen any abuse in that regard. If a speaker does use extra time and does abuse it, I can assure honourable senators that the Senate would not allow that to happen a second time.

When the Deputy Leader of the Government says, "We will give leave, but for a time period," it then becomes an argument of the length of the time period. If leave is requested for another 20 minutes and I think to myself that the speech can be completed in 10 minutes, then I will not give leave. It becomes an issue of time, not an issue of the subject matter before the house.

• (1000)

We are tampering with something with which we should not be tampering. The rules allow requests for leave. It might be a warning or a form of advice to the Speaker to say, "I seek leave to speak another 10 minutes." An honourable senator can always do that to give us some idea.

I do not think it is for the Deputy Leader of the Government, or anyone else, to arbitrarily set the time. If that were the case, we would not get anywhere. I suggest that we leave things as they are until the rules are changed.

**Hon. Douglas Roche:** Honourable senators, like Senator Murray, I did not intend to intervene in this discussion. However, having reference to Senator Murray's eloquent recapitulation of the changes to the rules in the early part of the 1990s, one effect of those changes was to penalize independent senators on an issue that is now well known to members of this place. If we are to have a discussion of a substantial nature with respect to the rules, I once more appeal to the Deputy Leader of the Government and the Deputy Leader of the Opposition to repair the present situation that prohibits independent senators from playing their full role as members of Senate committees.

[Translation]

**Hon. Fernand Robichaud:** Honourable senators, we have certain rules at the moment, but I think others should be made. Contrary to what some senators have said, I would like some limit when consent is given to extend the time allotted for a speech. It is hard for senators who will be giving speeches and who have other responsibilities to organize their schedule.

I have had to listen to speeches — very interesting ones — where the same things were often repeated. Often, during

Question Period, the same questions are put, and the debate continues much too long. Certain honourable senators may say they are totally independent. When I sat in the House of Commons, the time allotted for speaking was set. The government leader had unlimited time, the first person speaking to a bill had 45 minutes — as is the case here — and the others had 20 minutes for a speech and another 10 minutes for questions. That gave people ample time to speak, and the other members could ask for clarification on what was said.

Honorable senators, we should ask a committee to consider the length of the various speeches and interventions in the Senate. Quite frequently, His Honour is obliged to rise during Senators' Statements, because the three minutes are up. Having been in the Chair as Acting Speaker, I have seen senators take the entire 15-minute period set aside for Senators' Statements, which, in my opinion, is not fair to the others wanting to make statements at the time.

A committee could look at the way we set limits for speeches in the house.

**The Hon. the Speaker *pro tempore*:** I thank all senators for their contributions to this debate.

[English]

The Speaker and I discussed this issue last night. We will meet with advisors on it early next week. The Honourable the Speaker will be here on Monday when he will reply to this point of order.

## NISGA'A FINAL AGREEMENT BILL

### THIRD READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement;

And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence.

**Hon. Thelma J. Chalifoux:** Honourable senators, I rise today to speak to Bill C-9, the Nisga'a Final Agreement. However, before I do that, I should like to inform my colleagues that I am not a lawyer. I am an elder in the Métis nation. I was chair of the National Métis Elders Senate Commission, which considered a constitution for the Métis. I was co-chair of our Métis Elders Senate in Alberta, which was a quasi-judicial body that dealt with issues relating to our own communities. We followed the rules of natural justice. We heard all people on all issues, both pro and con, making our decisions as fairly as we could.



Honourable senators, the Nisga'a Final Agreement is a historic development marking the first modern day treaty in British Columbia. I should like to repeat that it is the "first modern day treaty in British Columbia." It clearly sets out land and self-government rights for the Nisga'a people. It is the culmination of a process that began more than 100 years ago in negotiations that have lasted more than a quarter of a century. It is a fair and honourable reconciliation that allows the Nisga'a people to achieve their rightful place in Canada.

With regard to the overlap situation, Robert Nault, Minister of Indian Affairs and Northern Development, clearly stated that under the general provisions of paragraph 33, "an agreement with one First Nation will not affect the rights of another First Nation." The final agreement requires a court to read down any final agreement provisions that are found to adversely affect the aboriginal right of another First Nation.

In the majority of cases, First Nations will settle overlap situations among themselves. There were more overlap issues in regard to this treaty than with the Gitanyow and the Gitksan. There was a large overlap with the Tsimshian nation, as there was with the Tahltan. Agreements have been reached by the Nisga'a and those First Nations with respect to their overlap issues. The Gitanyow leaders clearly stated that they did not want to stall the passage of this treaty; they only wanted verified assurances that the overlap issues would be addressed and resolved. Paragraph 33 is a categorical statement which, in my view, provides all of the assurances that any of the First Nation neighbours of the Nisga'a might need.

After listening to all the presenters, I have concluded that overlaps can only be resolved between the First Nations. The Nisga'a negotiations preceded the B.C. treaty process. The Gitanyow and Gitksan are part of the B.C. treaty process. It is not in the power of the B.C. Treaty Commission to resolve this issue. All we can do is ask each of the First Nations involved to go to the table in good faith and to use their best efforts to resolve this impasse.

The dominant society of Canada has spent over 100 years imposing their standards and their decisions on all nations of Canada. It is long overdue that aboriginal nations be allowed to conduct their negotiations between themselves without interference from outside interests. Chief Gosnell stressed that the Nisga'a are willing to carry on with the mediation.

With respect to the rights of native women in this treaty, I say that all women in Canada have the challenge of determining our rightful place within our country, Canada. Nonetheless, opponents of the treaty have suggested that the treaty or Nisga'a laws could affect the division of marital property in a way that discriminates against Nisga'a women. This is simply not the case.

The Nisga'a treaty provides that Nisga'a lands are not lands reserved for Indians within the meaning of the Constitution Act, 1867; nor are they reserves as defined in the Indian Act under the general provisions set out in paragraph 10 of that legislation. Reserves are owned by Her Majesty in right of Canada for the

use and benefit of Indian bands. On the effective date, the Nisga'a nation will own their own lands in fee simple. They can dispose of any estate or interest in any parcel of their lands without the consent of the Minister of Indian Affairs and Northern Development, as set out in the lands chapter of the legislation.

• (1010)

In effect, this establishes that in cases of marriage breakdown under this treaty, Nisga'a women will have the same rights and protection as all women in British Columbia in cases of matrimonial dispute. In the case of marital breakdown, British Columbia law will apply. The Nisga'a agreement will be subject to the Canadian Charter of Rights and Freedoms. Women will have full rights to vote for and seek election to all Nisga'a public institutions.

Let us now consider the question of the referendum. Should there have been one or should there not have been one? First, we must consider the demographics of British Columbia. The large majority of the population of British Columbia live in the Lower Mainland and on Vancouver Island. I am almost certain that, until Bill C-9 was introduced, 90 per cent of that population had never heard of the Nass Valley or the aboriginal nations who have lived there for thousands of years. I ask honourable senators: Why would a referendum be of any value to people who are not aware of the territory or its inhabitants and who probably would never even go there?

We heard presentations from non-aboriginal landowners who were very concerned about their fee simple lands and their leases. The ranchers were especially concerned. Further, we heard from representatives of the City of Terrace, B.C. which borders on the Nisga'a boundary. Some 15 per cent of the population of Terrace is of First Nation origin. Jack Talstra, the Mayor of Terrace, spoke on behalf of the city council. The City of Terrace supports, in principle, the Nisga'a treaty and desires its conclusion. Yes, they have concerns as a community and as citizens. However, the people of the City of Terrace view these concerns as challenges that can be overcome and they wish the treaty to be signed, as is, sooner rather than later so that they can focus their energy on implementation rather than past discussions and arguments.

Regarding the concerns of the ranchers and non-Nisga'a residents, the Nisga'a government will not have any jurisdiction over land currently owned by non-Nisga'a within the Nass Valley. All of the existing fee simple properties are expressly excluded from Nisga'a lands. The residents of these private parcels will continue to have the right to vote in federal, provincial and regional government elections.

The Nisga'a Final Agreement is not a template for other treaties. While parts of it, such as the application of the Charter, may provide a model for other treaties, its negotiation is unique. I have worked on land claims for many years. I can attest to the fact that there could never be a template for any treaty negotiation.

This agreement embodies a spirit of compromise. The Nisga'a people have given up all further claims against the Crown and within 12 years will be paying taxes like all other Canadians.

There have been many rumours that are unfounded and uninformed. The opponents of Bill C-9 have created an atmosphere of distrust and suspicion for the citizens of British Columbia. If they had studied this treaty and considered the value of its contents, there would be very little dispute surrounding this historic document.

The Nisga'a have negotiated in good faith, not only with both levels of government, but also with all communities that surround this land. They have made agreements on all the natural resources in the Nass Valley with the many departments that oversee these resources. The aboriginal people of Canada have always recognized their role as the caretakers of these lands. Why do people not realize that when reading remarks from the explorers who were lost when they came upon our ancestors and saw a paradise? Bill C-9 has given the people of the Nass Valley their rightful place in partnership with the government in protecting the wonderful resources of their valley.

We can now celebrate the strengthening of the Canadian family with the entry of the Nisga'a people, their nation, their government and their laws on terms to which Canada, British Columbia and the Nisga'a have agreed. The circle of Confederation is now more complete. Our children and our grandchildren will inherit a partnership at which the world will marvel. We have joined together a very proud and ancient nation, the Nisga'a, with a very young one called Canada, and we are a greater civilization for doing so.

I urge all honourable senators to pass this legislation and to allow the Nisga'a of the Nass Valley to begin the journey in governing their land.

**Some Hon. Senators:** Hear, hear!

**Hon. A. Raynell Andreychuk:** Honourable senators, Senator Chalifoux makes a compelling case that the treaty is fair to the people of the Nass Valley. I do not wish to enter into debate on what was said in the other place or in British Columbia. My concern has to do with the role of the federal government in this agreement.

Does the honourable senator agree that everyone on our committee from both sides of this chamber felt that the treaty was negotiated fairly for the Nisga'a people?

**Senator Chalifoux:** I thank the honourable senator for her question. The Nisga'a people organized very well and made possible some wonderful negotiations. I realize that the Honourable Senator Andreychuk is alluding to the Gitanyow and the Gitksan. It is not our place, nor the place of the federal government, to resolve that issue.

Everyone complimented the Nisga'a for their wonderful negotiations. They gave up a great deal to reach this conclusion. We must honour their decision and approve this treaty.

**Senator Andreychuk:** Honourable senators, the honourable senator has perhaps rightfully inferred that I wanted to talk about the Gitksan and the Gitanyow. Leaving that aside for the moment, I believe the treaty was negotiated fairly for the Nisga'a. It took into account what they needed. It was a compromise; that is something we heard over and over again. To the credit of the Nisga'a nation, they came to the table to negotiate. They knew that they would give up as well as get from the treaty. I believe strongly in the policy of negotiated settlements. It is something for which we have been fighting.

The difficulty I would like the honourable senator to address is not with the treaty. The difficulty is that, although the Nisga'a took the correct legal steps within their nation to give effect to the Nisga'a agreement, what we have been debating in the Senate is whether or not the federal government has taken the correct legal steps to give effect to the Nisga'a treaty; that is, is it constitutional?

**Senator Chalifoux:** In my opinion, it is constitutional. In 1982, I was one of the leaders who had to keep the home fires burning and to keep the people in food. I followed what was happening very closely. I took part in the negotiations within our own nation.

Yes, the interpretation of section 35 of the Constitution is constitutional and this agreement fits right into it.

● (1020)

Honourable senators, this is what our leaders fought for during all those years. I can name those leaders, such as Harry Daniels and Jim Sinclair. Some senators here today remember them. In my opinion, we must recognize that fight. This agreement is constitutional.

**Hon. Landon Pearson:** Honourable senators, I should like to add a few comments to what has already been said in this extraordinarily interesting debate on Bill C-9, which seeks to ratify the Nisga'a Final Agreement.

It has been a privilege to be part of this process. I entered the study of Bill C-9 already firmly committed to the inherent right of our aboriginal peoples to govern themselves within the wider context of Canada. After listening attentively to all the witnesses who appeared before us, I came away deeply impressed by the intelligence, substance and forbearance of the Nisga'a nation, and I am even more convinced of that right. I have also been confirmed in my belief in the capacity of aboriginal communities to exercise it responsibly.

This agreement may be the first one to put flesh on certain self-government rights implicit in section 35 of the Constitution. If so, I look forward to future agreements that will eventually bring closure to our seemingly endless efforts to bring resolution to the historical injustices we have inflicted on our aboriginal peoples.



A good deal of the debate that has swirled around Bill C-9 has been highly abstract, particularly the part that addresses the Constitution, the Charter of Rights and Freedoms, and the question of a potential third order of government. Trained in philosophy, I enjoy these high-level discussions, but eventually I like to descend to the practical. It is in this spirit that I would like to speak to concerns that were raised by some people with respect to the paramountcy of certain Nisga'a laws.

What the Nisga'a Final Agreement states is that in respect to a number of subject matters internal to the Nisga'a nation, Nisga'a laws will have paramountcy over federal or provincial laws in the event of an inconsistency or conflict. A number of people find this alarming. What does this actually mean?

First, as the Nisga'a themselves reminded us in a supplementary submission to the Standing Senate Committee on Aboriginal Peoples on March 23, section 35 does not provide absolute protection to aboriginal and treaty rights. Legislation may be enacted that prevails over Nisga'a laws, as detailed in the treaty, if it can be shown that the infringement is justified and consistent with the honour of the Crown. Second, the Nisga'a nation initially sought exclusive jurisdiction. However, at the insistence of Canada, the Nisga'a compromised on concurrent jurisdiction with the understanding that in appropriate circumstances Nisga'a law would prevail. Third, in most cases, Nisga'a law will only prevail once specific provincial or federal standards are met.

Honourable senators, let me give you three examples of laws that would be paramount according to the agreement. My first example is that Nisga'a law will prevail with respect to organizing and structuring the delivery of health services on Nisga'a land. Health services themselves, however, will be governed by provincial laws. This makes practical sense to me. Over the years I have observed only too often what happens when the state alone decides when and where to deliver health services. It frequently ends up by being to the detriment of the population concerned.

I am also happy to accord the Nisga'a the authority to license aboriginal healers on Nisga'a land, including measures in respect of competent ethics and the quality of practice that are reasonably required to protect the public. I doubt if any non-native would have the necessary competence to do this. Therefore, this seems to me totally appropriate.

A second area where Nisga'a law will prevail is in child and family services on Nisga'a land, if and only if Nisga'a laws include standards comparable to provincial standards intended to ensure the safety and well-being of children and their families. From my experience of the questionable history of provincial practice in various parts of Canada with respect to aboriginal children and their families, this is not only appropriate but

fundamental in order to respect the best interests of Nisga'a children.

A third area where Nisga'a law will prevail is in respect to the use, management, possession or disposition of Nisga'a lands owned by the Nisga'a nation, a Nisga'a village or a Nisga'a corporation. I have no more problem with this than I have with a family trust agreement once it has been set up by the law, just as this agreement will be by Bill C-9. I have just been through the lengthy process of negotiating such an agreement. It took me 14 years to get it right, so I have sympathy with the Nisga'a regarding their negotiating period. On behalf of my children and their cousins, I do not think anyone else should now interfere in their internal decisions, much as I am tempted to do so, to manage what is their property.

In my view, all of the other social areas in which Nisga'a law will prevail, such as Nisga'a language and culture, or the adoption of Nisga'a children, providing that the "best interest of the child" is the paramount consideration — incidentally, Canada took a reservation on the United Nations Convention on the Rights of the Child to allow for just such eventuality for aboriginal peoples — or pre-school to grade-12 education of Nisga'a children if Nisga'a laws include provision for curriculum, examinations and other standards that permit transfers between school systems and for appropriate certification of teachers, are equally reasonable and necessary.

I am less knowledgeable about areas related to the fisheries, forestry and wildlife. However, I note with satisfaction, and in agreement with Senator Chalifoux, the attention that was paid by the Nisga'a to negotiating with the provincial ministry the requirement to meet or exceed provincial standards with respect to forest resources, as well as the requirement for consistency regarding wildlife and fisheries with annual management plans approved by the minister.

I should like also to remind honourable senators that the Nisga'a Final Agreement gives primacy to federal and provincial laws in such important areas as public order, peace and safety, prohibition of and the terms and conditions for the sale, exchange, possession or consumption of intoxicants on Nisga'a lands, and emergency preparedness, to name only a few.

Honourable senators, knowing how busy we all are, I expect that a number of you have not had the time to read the complete text of the Nisga'a Final Agreement. That is why I am providing some of the details contained in the agreement as evidence of the extreme care with which all elements of this agreement have been drafted. Obviously, all parties to the agreement have compromised to some extent. That, after all, is the nature the negotiation. However, I should like to take this opportunity to express my conviction that all participants have negotiated in good faith. I also wish to express my admiration for the commitment that the Nisga'a leaders have shown to the future of their community and to the understanding that a good future for the Nisga'a depends upon living and working constructively with their non-Nisga'a neighbours and acting in harmony with the greater collectivity within which they reside — that is, in British Columbia and Canada.

In my view, the Nisga'a Final Agreement is an excellent model of the careful negotiations we need to engage in to come to solutions that will make amends for the mistakes we made in the past with respect to other relationships with aboriginal peoples. It was mentioned several times during our committee hearings that "we are all here to stay," and unless we negotiate the terms of our contemporary coexistence, we will not share a prosperous future.

Honourable senators, we must not abdicate our responsibility as parliamentarians to the courts. Let us proceed immediately on Bill C-9, which I urge all senators to support.

On motion of Senator Comeau, debate adjourned.

# **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Louis J. Robichaud:** Honourable senators, I should like to make my very small contribution to this important debate — important to all Canadians and to all Quebecers because it has to do with the unity of our country, with the future of our country, and with the future of all the provinces and territories of our country, including Quebec.

[Translation]

• (1030)

Bill C-20 is a response to those who resort to confusion and ambiguity to promote their political views. As its name indicates, Bill C-20 proposes a clear process, should there be a third referendum on the secession of Quebec. It does not in any way prevent the Quebec government from asking any question it wants in such a referendum, but it ensures that the rights of Quebecers and other Canadians will be protected. The purpose of the bill is ensure that the Government of Canada will never enter into negotiations on secession, unless the population of a province has clearly expressed its will to cease to be a part of Canada.

The bill specifies that the Government of Canada does not have to negotiate secession if the question asked was not clear and if there was not a clear majority that expressed its will to

secede. In the few minutes that I have, I will focus on the second aspect of the debate, namely the notion of a clear majority.

Like the Supreme Court opinion on which it is based, Bill C-20 does not set a threshold. The reason for that is simple. The Supreme Court asked the political players to assess the clarity of a majority that voted in favour of secession. The court used the expression "a clear majority" or "majorité claire" no less than 13 times.

The court also said that evaluating clarity involves a qualitative component that must be assessed based on the circumstances surrounding the holding of a referendum. These circumstances are not known right now, as pointed out the Minister of Intergovernmental Affairs, when he said:

It is therefore impossible to determine what constitutes that clear majority at this time, in the calm atmosphere of a united Canada, outside the turbulence of a referendum, because the circumstances in which that political assessment would have to be made are unknown to us.

On another level, the 1977 Quebec white paper on public consultations does not set any threshold either. It says:

The consultative nature of referendums means that it would be unnecessary to include in the legislation special provisions on the majority required or the minimum participation rate.

As I recall, in 1977, it is the Lévesque government that was in office in Quebec. The absence of a threshold is what enabled Minister Louise Harel to ignore, perfectly legally, the result of a referendum recently held in Mont-Tremblant, in which 96 per cent of the voters were opposed to merging with a neighbouring municipality.

One thing remains certain: You cannot break up a country with a majority as small as 50 per cent plus one, in other words, one vote extra. There are two kinds of argument in favour of this. The first is that a majority of 50 per cent plus one is not the only majority acceptable in democracy. There are many examples in Quebec statutes of situations where 50 per cent plus one is not enough. The second is that there is no other example in the world of secession with such a small majority.

I am therefore of the opinion that the Government of Quebec is wrong to say that 50 per cent plus one is the only majority acceptable in democracy. Several of its own statutes operate on a different logic. The Loi sur Hydro-Québec sets out two situations in which a super-majority is required. If memory serves, this legislation was passed when René Lévesque became chairman of the Commission hydroélectrique du Québec.

The Loi sur les caisses d'épargne et de crédit, which governs the Mouvement Desjardins, for instance, contains three requirements. We find one requirement for a super-majority in the Lois sur les sociétés d'entraide économique, seven in the Loi sur les coopératives, and 22 in the Loi sur les compagnies.



It is the same in the union movement. The Fédération des travailleurs du Québec requires a minimum majority of two-thirds of voting members to amend its by-laws or to move a special resolution at a convention. The Confédération des syndicats nationaux requires a majority of two-thirds of its voting members to amend its bylaws in cases of emergency. The Syndicat des employés d'Hydro-Québec requires a majority of two-thirds of its voting members to amend its by-laws. Many other examples could be given to show that the rule of 50 per cent plus one is not the only acceptable percentage in democracy.

In each of the cases of secession to which I have just referred, the majority of votes obtained was greater than 70 per cent of votes cast and the average of these majorities exceeded 90 per cent. To these cases must be added those where the attempted secession met with failure for lack of sufficient popular support. This was the case for the Faeroe Islands' secession from Denmark in 1946 (50.7 per cent) and that of Nevis in 1998 with 61.7 per cent, and even that failed. In the latter case, a two-thirds majority was necessary.

Recently, the prestigious British weekly *The Economist* mentioned that, in the case of secession, a majority of 50 per cent plus one was not enough and that an attempt at secession needed much more than 50 per cent plus one to have any sort of legitimacy.

So there are many examples to prove that a majority of 50 per cent plus one is not enough for secession. The reason the separatists insist on that figure for a majority is their inability to obtain anything higher, and particularly to obtain it with clarity, by presenting Quebecers with their true option: separation from the rest of Canada.

That is why they are turning their backs on international examples and on simple common sense and are attempting to convince Quebecers that their view is the right one. Quebecers, however, refuse to lose their country based on a misunderstanding. To ensure that another referendum on secession, should there be one, is held in clarity is to respect the people of Quebec. Why would the sovereignists fear clarity, unless they fear the reception their true option would get from Quebecers?

Bill C-20 makes clarity the top priority. In my opinion, that is what it always needs to be in a democracy. For all these reasons, honourable senators, I support Bill C-20 and call upon my colleagues to follow suit.

• (10:40)

**Hon. Lowell Murray:** Honourable senators, Senator Robichaud has reminded us, most appropriately, that the Supreme Court made reference to the qualitative dimension of the majority. I wish to know what the honourable senator understands by "qualitative dimension". Does this mean an

analysis of the vote, the day after, taking into account regional, cultural and linguistic aspects?

**Senator Robichaud:** Exactly, honourable senators. The answer to Senator Murray's question has been given by the Minister of Intergovernmental Affairs, Stéphane Dion. He has said that, at this point in time, the term "qualitative" cannot be defined because there are too many imponderables and unknowns involved. When the circumstances require us to study the situation — for example, after another referendum — at that time the imponderables will no longer be present, and the Senate as well as the House of Commons will be in a position to determine what the term "qualitative" means.

**Senator Murray:** Frankly, the prospect of analyzing the vote according to cultural and linguistic aspects scares me. That is exactly what Messrs Parizeau and Landry did on referendum night 1995, analyze the vote according to ethnic and linguistic criteria. Such an approach is, in my opinion, far from democratic.

**Senator Robichaud:** I am pleased that the senator has used the words "in my opinion". I do not share that opinion.

On motion of Senator Beaudoin, debate adjourned.

[English]

## ADJOURNMENT

**Hon. Dan Hays (Deputy Leader of the Government)** moved:

That when the Senate adjourns today, it do stand adjourned until Monday next, April 10, 2000, at 4:00 p.m.

Motion agreed to.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### SEVENTH REPORT OF COMMITTEE ADOPTED— MOTION IN AMENDMENT

The Senate proceeded to consideration of the seventh report of the Standing Committee on Internal Economy, Budgets and Administration (budgets of certain committees), presented in the Senate on April 4, 2000.—(*Honourable Senator Nolin*).

**Hon. Marie-P. Poulin,** moved the adoption of the report.

She said: The seventh report of the Internal Economy Committee recommends that interim funding be released immediately to the various Senate committees. Our Subcommittee on Finance and Budgets will review all budgets with their respective committee chairs in early May. By then, committee expenditure plans will be firmer and committees will have a more realistic view of what funds will be needed for fiscal year 2000-2001.

I should like to inform honourable senators that the report recommends that the Subcommittee of the Social Affairs, Science and Technology Committee to update "Of Life and Death", Chaired by Senator Carstairs, be allocated \$2,630. Senator Carstairs had indicated to me, on behalf of her subcommittee, that the amount is insufficient since the committee will be reporting by early June. I believe that Senator Hays, on behalf of Senator Carstairs, has an amendment to that effect.

#### MOTION IN AMENDMENT

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I move:

That the Report be amended by deleting the amount of \$2,630 allocated to the Social Affairs Subcommittee to update "Of Life and Death" and substituting therefor the amount of \$7,890.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, concerning the amendment, usually we have either the Chair or the Deputy Chair of the committee who presents the report here so that we may ask questions. As they are not here, I will turn to the mover of this amendment.

My question is simply this: Have all the steps to be followed by the Internal Economy Committee and the subcommittee that deals with budgets been followed in this matter? We in this chamber are being asked to make an amendment to a report. We need to know whether, by doing that, we are undermining procedures that the committee must follow.

**Senator Hays:** Honourable senators, I understand Senator Kinsella's concern. Unfortunately, we do not have representatives of the committee here today to respond on behalf of the committee. However, I have made inquiries and I can advise you, in response to your question, that the Chair, the Chair of the subcommittee, and others on the Internal Economy Committee are aware of this request and have communicated their approval for this change. However, they are not here today and this is a "second-hand" means of giving an answer.

I might observe that it is not a very complex issue.

• (1050)

This issue has its root in the decision of the Subcommittee on Budgets that allocations to committees would be made in one-third portions during the course of the year. I am informed that this practice was applied inadvertently to Senator Carstairs'

subcommittee. One third is paid out for each corresponding period of the year. The first third of the year incorporates the date by which this committee must report, namely June 6. It was not taken into consideration that this subcommittee budget is only relevant for the first third of the year. Accordingly, they were short-changed in their requirements to complete their work.

This amendment is simply to remedy that oversight. That is my best answer, based on the inquiries I have made.

**Hon. Mabel M. DeWare:** Honourable senators, I am a member of the Budgets Subcommittee. Senator Stollery is also a member, so now there are two of us here.

I have no problem with the motion to increase the amount of money, but the matter was supposed to come before our subcommittee. We recommended in a notice to all committee Chairs on March 21, 2000, that the plan was to review all budgets at the end of April. We have a time set up now for the second week in May when we will hear representations on all budgets.

We calculated the 9/27 split on the basis of 27 weeks of work. The very last paragraph of that letter says that if the 9/27 split is not sufficient or if longer-term planning considerations should prevail, committee chairmen should let us know.

We had to get the budgets approved because the committees had to work in April. If this was not sufficient, the Chairs were to come before our subcommittee and explain the reasons why, and we would oblige them with consideration as to whether to release the rest of their amount as required for those three weeks.

As a member of the Budgets Subcommittee, I have not been informed of this matter. I have not been approached. I have not had a letter or a call from Senator Kroft informing me of this change. Therefore, I find this quite irregular. Senator Carstairs could have come before us or called. Perhaps she has spoken to Senator Kroft but I am not aware of it, and I am surprised to see the matter before the Senate in this manner today.

**Senator Hays:** Honourable senators, I thank Senator DeWare. I am relying on a copy of a letter, although it is not a signed copy, sent by Senator Carstairs to Senator Kroft in his capacity as Chair of the Subcommittee on Budgets, dated March 31, generally outlining the matter. I am happy to table this document so it can be shown to Senator DeWare.

Senator Stollery is here and may wish to comment as well. If it is the desire of two members of the subcommittee that we not deal with this matter, then I would understand why my amendment might be defeated.

**Senator Kinsella:** Honourable senators, will we undermine a very good process that our Internal Economy Committee has set up with its subcommittees? If we simply refer the matter back to the committee, they can maintain the integrity of their process. I am sure they can deal with the next week. Senator Hays could withdraw his motion and the Internal Economy Committee and its subcommittee can address the matter in the proper way. That is one means of resolving the matter.



**Hon. Eymard G. Corbin:** Honourable senators, I would like to say one or two simple things. I will not get involved in the mechanics of the Internal Economy Committee proceedings. I find it passing strange, nevertheless, that this special committee, which had indicated to the Internal Economy Committee that it would be reporting its findings on the five-year-old Senate report "On Life and Death" on June 7 of this year, would be allocated some \$2,000 for the first part of the year. Internal Economy new darn well that committee would report on June 7 and it applied to that committee the same stringent rules it applies to all committees of the Senate that work year-round.

The Internal Economy Committee took that decision. I do not want to call it a lack of judgment because I respect the committee members too much, but sometimes one must disregard or bend the rules to accommodate the work and the time period applied to a committee.

Now we are faced with this crazy situation. The Chair of the Internal Economy Subcommittee is not here. The Chair of the Internal Economy Committee is not here. Everything is held up. We are unable to proceed with solidarity to the resolution of this problem. If order is required in this place, it is not with the proceedings per se; it is in using initial good judgment in making this kind of rule.

Let it stand, if you wish, honourable senators, but some bills will remain unpaid well into December, when the committee will have reported its findings on June 7. Use common sense in your work, for goodness sake.

[Translation]

**Hon. Marie-P. Poulin:** Honourable senators, as a member of the Internal Economy Committee, I should like to point out one thing. When Senator Carstairs drew Senator Kroft's attention to the fact that a very small amount was being sought for this study and that the report would be presented in June, Senator Kroft apologized to Senator Carstairs, saying:

[English]

"Oh my God, it has really been an oversight." Since Senator Kroft and his subcommittee have done such excellent work on the whole process of budgets and since Senator Kroft, unfortunately, has not been here this week, because I believe he is unwell, I should like to make sure that the French saying does not hold for today, "Les absents ont toujours tort."

I do not think that due process was followed inasmuch as Senator Kroft reported immediately his oversight to Senator Rompkey though a letter and also in person. It was such a small amount. I am sure if he had been here he would have immediately contacted the other two members of the subcommittee.

**Hon. Peter A. Stollery:** Honourable senators, I just got here a few minutes ago, but I have looked at the communication. It is important to say that Senator DeWare, Senator Kroft and myself have worked together very amicably. We get along well and it has been an extremely good subcommittee.

I first learned of this matter the other day. Apparently the letter is dated the last day of March. I recall Senator Carstairs coming before the subcommittee and I do not recall this particular problem being raised. I have no difficulty with releasing the money. As Senator Corbin points out quite correctly, we must use common sense.

• (1100)

Honourable senators, I think that the Internal Economy Committee has attempted to meet the needs of the various chairmen of the committees and subcommittees. Quite honestly, I do not know where this issue arose. I was at the meeting when we dealt with the budget of Senator Carstairs' subcommittee, and I do not recall this particular problem being mentioned. However, my memory could fail me and I could be wrong. Of course, the subcommittee must complete its work by a certain time. There is no question about that.

I do find it a little unusual that we are dealing with such a small matter here in the Senate, taking up the valuable time of the Senate with something that is effectively a minor management question from the Internal Economy Committee and a subcommittee of the Internal Economy Committee.

That is all I have to say on the matter. I just walked into the chamber and saw this letter. I have listened to my very friendly colleague Senator DeWare and all the other senators who have spoken. Again, I do not know why we are debating such a small matter in the chamber, although everyone agrees it must be resolved so the committee can finish its work. I do not think any one of us has a problem with that.

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Hon. Senators:** Agreed.

Motion in amendment agreed to.

**The Hon. the Speaker pro tempore:** We are now on the main motion. Is it your pleasure, honourable senators, to adopt the motion, as amended?

**Hon. Senators:** Agreed.

Motion agreed to, as amended, and report adopted.

[Translation]

## SITUATION OF OFFICIAL LANGUAGES IN ONTARIO

### INQUIRY

Leave having been given to proceed to inquiries:

**Hon. Jean-Robert Gauthier,** having given notice on Thursday, February 10, 2000:

That he will call the attention of the Senate to current issues involving official languages in Ontario.

He said: Honourable senators, I would like to speak to you as a Franco-Ontarian senator, having been born in Ontario and always worked there.

I will begin with a very important report tabled here a while back by Senator Simard, entitled "Bridging the Gap: From Olivion to the Rule of Law". This report was very well received. While I deplore the strictly partisan nature of some parts of this report, I would subscribe to the underlying message the analysis sends to the Government of Canada.

In fact, the recommendations made to the government in general and to the Senate in particular seem quite relevant in the current context in Canada. The nineteenth recommendation applies specifically to this house, and I hasten to support it without reservation. It reads as follows:

We recommend that the Senate of Canada apply the test of linguistic duality and compliance with the precepts of the Official Languages Act and the language provisions of the Constitution Act, 1982 to every bill which the House of Commons submits to it for consideration and approval.

It seems to me to fit perfectly with the mission of this house, which, among other things, has the responsibility of ensuring the preservation of Canadian institutions and the basic principles underlying our society, including Canada's linguistic duality.

We must keep in mind, in this regard, that, in the *Reference re Secession of Quebec*, the Supreme Court of Canada identified respect for minorities as one of the four principles underlying the Canadian Constitution, affording it a preferential place among the three others, which are: federalism, democracy and the rule of law.

As John Ralston Saul wrote in his book entitled *Reflections of a Siamese Twin: Canada at the End of the Twentieth Century*:

To be a Francophone is to make an effort every day.

It is because there were Franco-Ontarians who were prepared to make these efforts every day that, as we enter the new millennium, Ontario has a thriving francophone community supported by a strong institutional infrastructure.

I want to tell you about that community, about its education network, its cultural creativity, its economic strength, its communication tools and its legal services. The absolute number of francophones in Ontario has constantly grown from the beginning of its colonization until 1991. According to Statistics Canada, that number first diminished between 1991 and 1996, when there were 5,000 fewer Ontarians whose mother tongue was French. However, at the beginning of that same period, in 1991, the number of people belonging to an ethnic minority but having French as their first official language increased by 6,000.

However, it is true that the proportion of francophones in Ontario has gone down, from 10 per cent at the beginning of the century to 5 per cent in 1995. It is because Ontario's population literally exploded that, today, it accounts for about one third of Canada's population, while francophones in that province

account for about one half of all francophones in minority situations outside Quebec.

With half a million people defining themselves as members of Ontario's francophonie, in addition to another half a million Ontarians who also speak French, we have close to one million people in our province who use French as their first or second language.

I want to tell you about the progress made over the past 30 years in French-language education in Ontario. A study done by the Royal Commission of Inquiry on Bilingualism and Biculturalism in the sixties showed that very few young francophones in Ontario went beyond grade nine in school. In fact, a study later conducted by the Ontario Institute for Studies in Education showed that only 14 per cent of Franco-Ontarian students continued their education beyond grade ten.

• (1110)

They dropped out after Grade 10. Eighty-six per cent did not complete secondary school. The result was that these people were ill-prepared to earn their living and had difficulty adapting to the labour market.

It was this observation that led me to get involved in the education sector in 1960. We did not have French-language schools in Ontario. We had bilingual schools where we were taught French, geography and history. All the rest was in English. Only the rich — and there were not many — could afford to go to private schools. The majority of us could not. I was forced to settle for a technical school in Ottawa where there were only two classes for francophones because, we were told, there were not enough students.

In 1966, there were 1,700 francophones in the Ottawa-Carleton region pursuing their secondary education in private schools, colleges and convents. In 1972, when public French secondary schools were established, there were 7,200 francophone students in attendance. In other words, the number of students increased in a very short time. The critical mass was there, but not the services, the schools or the students.

In the past ten years, thanks to legal challenges under section 23 of the Canadian Charter of Rights and Freedoms, and thanks as well to substantial support from the Department of Canadian Heritage, these schools now come under 12 French-language school boards with province-wide jurisdiction. Since 1985, access to French-language education in Ontario no longer hinges on section 23(3)(b)'s "where numbers warrant" clause; all those affected, wherever they live, are now entitled to instruction in their own language. This quantifying clause, that is the "where numbers warrant", is what made me vote against the Constitution Act, 1982. It was one of the reasons I could not support a constitution which quantified me, and I asked publicly whether there was going to be quantification of the poor, the disabled, the blind, before deciding what they were entitled to. I do not believe such a thing can be allowed in my country. It hurt me deeply to have to vote against it, but I could not accept this. In Ontario, this is now a thing of the past. There are still provinces where heads are counted before schools are established, but with time and patience, we will manage to get that changed too.



In the late 1980s, the demands of the Franco-Ontarian community focussed on a project for three community colleges that would provide post-secondary studies in French. As a result, la Cité Collégiale, a community college, opened its doors in 1990 to serve Eastern Ontario, followed in 1995 by Collège Boréal, serving Northern Ontario, and Collège des Grands Lacs, serving Southwestern Ontario. Today, thanks to these three community colleges and the Collège de technologie agricole et alimentaire d'Alfred — currently under Guelph University after being threatened with closure — there are 5,000 full-time francophone college students and nearly 18,000 part-timers. This shows that there was a real need to provide these students with higher education.

In recent decades, more and more university programs have been made available in French within institutions that also provide courses in English. These bilingual institutions have also developed a distance learning network making use of modern information and communications technologies. At the present time, 15 communities dispersed over the area in which 95 per cent of the Franco-Ontarian population is located have access to this network.

The 50 per cent difference that existed in the early eighties between francophones and anglophones in Ontario enrolled in post-secondary studies has now dropped to 25 per cent, and continues to decrease. This is a positive step forward for the community.

A good indicator of the vitality of a community lies in its cultural life. Since 1968, francophone Ontario has truly burst forth culturally and artistically. Examples include the Northern Ontario Artists' Co-operative, the Galerie du Nouvel Ontario, Éditions Prise de Parole, *Liaison* magazine and Éditions Interligne. We can add to that the 25 francophone cultural centres and theatres such as the Nouvelle Scène in Ottawa and the Nouvel Ontario in Sudbury. Francophone Ontario, honourable senators, has as well its own writers, poets, novelists, and performers in song, theatre arts, dance, visual arts, music and comedy. I must mention here the Franco-Ontarian writer Jean-Marc Dalpé, who has twice won the Governor General's Award. I must also mention the great painter, Bernard Poulin, husband of the Honourable Marie Poulin, our colleague here in the Senate.

Ontario is home to the only French-language television channel outside Quebec. TFO, the French educational network, broadcasts across Ontario and now in New Brunswick as well. Unfortunately, the CRTC recently refused to require Quebec cable companies to carry its signal — which would have considerably benefited them, in my opinion. I hope that one day TFO will have its signal sent across Canada and thus carry its message about the French fact in a minority setting.

I firmly believe that communication provided by television — either by cable or by satellite — is vital to the survival of our official language minority groups. So long as programming remains available in French to our francophone communities in

Alberta, Saskatchewan, Manitoba, Ontario and in Eastern Canada, we have a chance of surviving. However, exposure to programming in English only coming primarily from the United States is a factor of assimilation.

**The Hon. the Speaker *pro tempore*:** I am sorry to have to inform Senator Gauthier that his 15 minutes is up. Does he seek leave to continue?

**Senator Gauthier:** If I may.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Gauthier:** The Franco-Ontarian community has acquired a network of community radio stations. It also has access to the broadcasts of Radio-Canada and the TVA network, as well as TV5 and RDI. Several regional French-language intermediaries are serving as a catalyst for communities in Cornwall, Sudbury, Hearst, Toronto, Hawkesbury and Penetanguishene. The daily newspaper *Le Droit*, despite the fact that it is aimed at readers in Quebec as much as in Ontario, remains the only French-language daily in Ontario.

Honourable senators, for lack of time, I have not gone into the economic or legal issues. Nor have I addressed our other concerns. But a *sine qua non* for ensuring that francophone communities in this country develop and flourish is our government's unfailing commitment to Canada's linguistic duality.

The time has come to think positive and not to keep going on about assimilation. We must be aware and positive. That is my attitude and I believe that Canada is making progress, and that it is strengthened by the presence of vibrant and dynamic francophone communities in each of its provinces. Their presence will help to unite the country.

**The Hon. the Speaker *pro tempore*:** Honourable senators, if no other senator wishes to speak, this inquiry is considered debated.

[English]

## EUROPEAN MONETARY UNION

### REPORT OF FOREIGN AFFAIRS COMMITTEE ON STUDY— DEBATE CONTINUED

On the Order:

Resuming debate on the consideration of the fourth report of the Standing Senate Committee on Foreign Affairs entitled: "Europe Revisited: Consequences of Increased European Integration For Canada", tabled in the Senate on November 17, 1999.—(Honourable Senator Andreychuk).

**Hon. A. Raynell Andreychuk:** Honourable senators, I rise today to speak to this item to discharge my undertaking to Senator Stewart who, before he left, implored the committee members to speak to our reports and to his continuing concern about highlighting the relationship between Canada and Europe. Therefore, I will take a few minutes to speak to the report entitled "Europe Revisited: Consequences of Increased European Integration for Canada".

First, I wish to express my appreciation to Senator Stewart for his dedication to spotlighting European issues, especially economic issues.

Second, I should like to thank Ms Line Gravel, our clerk, and all others who helped so admirably in delivering this report.

A special mention is due Mr. Peter Berg, for his expertise and support in managing the content of the report, and for his valuable advice in our presentation of a timely report. I should like to underscore his unfailing support to all senators to endeavour to include the varied perspectives and concerns in such an even-handed and professional manner.

Our ongoing analysis of European integration and its implications for Canada led us to this report, which dealt mainly with the economic and monetary union of Europe and its Agenda 2000.

While much attention was paid last year to the euro, our study attempted to look at the economic and monetary union to see whether it would be a successful venture as an economic plan. Second, our study looked at the economic reforms that were needed in Europe, which were stressed over and over to us as a necessity. In that light, it was important to note whether the Economic Monetary Union would be the impetus for these reforms and, if not, would there be any hope that these needed reforms would take place in any event.

By way of background, the EMU, along with its new currency, the euro, came into being July 1, 1999. The euro will continue to coexist with individual currencies until January 1, 2002, with the eventual phasing out of paper currency and coins of each country no later than the end of June 2002.

At present, a total of 11 countries have agreed to adopt the new common currency, with the exception of the United Kingdom, Sweden and Denmark, who did not accept the EMU plan and, further, Greece, who did not satisfy the economic entry requirements.

Initially, the push for the EMU spurred some countries to sufficient economic changes so that they were able to meet the economic criteria for entering the euro. Much of their time was spent in determining the position of the U.K. In our report, we enumerate the factors that precluded the U.K. from joining. This is an important issue to us, since the majority of European trade in percentage terms is with the U.K., although that number may be declining.

Most, however, seem to feel that should the EMU be successful, at some point the United Kingdom would be obliged to enter the union, with estimates from the year 2003 and beyond as timing for the United Kingdom entry.

There are some lessons learned from our report, which I wish to highlight today. I urge all senators to read the full report for a greater understanding of the trade and investment area of the European Union.

The euro 11 zone comprises approximately 300 million inhabitants and roughly matches the share of global economic output — about 20 per cent — held by the United States, and therefore cannot be ignored by us.

First, the committee came to the conclusion that the EMU is essentially a grand experiment designed primarily to achieve greater political integration. The economic benefits, if any, in the long run are seen as over and above this main achievement of political integration. The micro-economic benefits of the monetary union are, in fact, not that great and are overshadowed by the concerns surrounding this monetary adventure.

The EMU proponents often argue that the currency union will accelerate the push for economic reform, such as tax reforms, social benefits reforms, labour market reforms, et cetera, within the euro countries. The real question, however, is whether this causation will work. The committee heard that reforms needed to occur with or without the euro. It was observed that if the necessary reforms were implemented, that would certainly help the EMU to become successful. Given the past history of reform in Europe, a large group of skeptics remains unconvinced whether serious economic reforms will actually happen in Europe, with or without the EMU. Certainly, the committee heard from many sources and joined the skepticism about real reform, particularly on the labour market front.

Another issue with which the committee was preoccupied was whether the EMU is an optimum currency area; that is, whether countries currently making up the EMU are conducive to delivering a viable currency area and, therefore, maximizing the individual positions of the members.

Member countries are at very different points in the business cycle and have differing economic structures. Thus, they require rather different monetary policies and not the one-size-fits-all approach currently in place in the EMU. Other key missing ingredients include labour market flexibility, labour mobility, and a central fiscal authority with the ability to assist regions hard hit by adverse economic shocks.

• (1130)

Contributing to the difficulty is the Growth and Stability Pact that limits fiscal transfers from individual countries. Another issue was the functioning of the European Central Bank, which has been recently criticized for its lack of transparency and accountability, and for a flawed system of financial supervision. The same tension between European integration and national authority surrounds the bank and it is yet to be tested.



Finally, the implication of the EMU for the future of North American monetary arrangements is the biggest issue for Canada, as the committee found that direct economic effects are secondary and, at any rate, marginal. In other words, when the EU came into existence with all the fanfare of the euro, much discussion took place in North America, including here in the Senate, about the advisability of a North American monetary arrangement. The committee found that the North American situation is quite different from that of Europe but that some lessons can be learned. The committee found that foremost is the need to have the right winning conditions in place, and these simply are not there in the case of Europe. The necessary economic groundwork had not been completed. Therefore, this most certainly points out the need for Canada not to be in a hurry on a decision on the North American monetary union. We have benefited from flexible exchange rates during the Asian crisis, and these winning conditions for an optimum currency area on this continent are certainly not yet in place. Besides, there is no discernible desire for a political union that could push us into a similar European structure. Due to the size and the importance of the European Union, the committee clearly felt that this area must be constantly monitored, as the results of the EMU are far from known or final.

The impact of the EMU on Canada was the primary concern of the committee. In our study and our assessment of presenters who appeared before us, it was evident that the EU is in the process of reform and that the EU's Agenda 2000 is welcome. However, much deeper and fundamental reforms must be undertaken, especially in the common agricultural policy. Real political will to dismantle subsidies by removing direct price support was lacking.

In my opinion, honourable senators, the federal government must formulate a much more aggressive political strategy with respect to Europe. Taking into account the World Trade Organization and future rounds of multilateral trade negotiations, Canada should take a leadership role with like-minded countries to end these trade-distorting subsidies from which Canada is often the loser. This will require an overall federal agricultural strategy in consultation with the provinces.

In the last number of months, the federal government's approach to the agricultural situation in Western Canada leaves me to believe there is little in place to accomplish a long-term solution to agriculture. It remains to be seen if the government has truly moved from its Band-Aid approach instead of looking to a comprehensive agricultural reform strategy.

Another lesson learned from our study is that Europe continues to see Canada as a strictly resource-based economy, whereas in actual fact some 70 per cent of our exports are now industrial products. This "information deficit" needs to be overcome and the Government of Canada should urgently develop a strategy for information to businesses in Canada and Europe to turn this perception around. I need not go into the detraction of trade irritants, as that was fully explored in our initial report but bears rereading.

I will not reiterate the remarks made by Senator Stollery and former senator Stewart as to the position of trade and our declining position in Europe, but I do want to underscore that the EU is both the second largest source and destination of foreign direct investment for Canada.

Another issue of importance is whether transatlantic trade could be enhanced by a formal free trade agreement. While there may be some benefits to such an agreement, to lessen the fears of those concerned about a "fortress Europe," the prospects for the same do not appear to be realistic. In fact, it would be my assessment that we would spend needless time and energy pursuing a transatlantic free trade agreement, or TAFTA, simply because the U.S. had advanced this area and the EU and the U.S. were not interested in expanding it to include Canada. In other words, the catch-up that Canada would be trying to make would not be of benefit to us.

Canada's efforts were delayed by the actions taken in the turbot war. While this seems to have produced the effect that no TAFTA was signed, the fisheries problems were not fixed either. It would appear that the Department of Foreign Affairs and International Trade officials who testified were interested in Europe, but not at the expense of the existing prosperous relationship with the United States. Therefore, the committee concluded that the federal government's own trade focus appears to be shifting away from Europe at the same time as the natural forces of economic integration are pulling commercial activity southward.

Honourable senators, the committee believes that it is a strategic error to shift from Europe, and the committee called for a revitalization of the transatlantic economic links. For my own part, I fully subscribe to this recommendation, as it would appear to me that the Canadian government has segmented its approach to Europe, looking at NATO in isolation, trade in isolation, and so forth. A comprehensive and interrelated foreign policy toward Europe is needed.

Further, in a previous European report when we called upon a strategic analysis, evaluation and planning — in other words, impact evaluation of the enlargement of Europe — very little evidence of this has appeared. If business as usual toward Europe occurs, we will be missing an opportunity for a significant increased trade and investment role in Europe and, consequently, a lessened political presence in the security and political sphere. Former senator John Stewart took this on as a challenge, and I hope that the committee will continue to work on this perspective.

While Canadians are well aware of the political and economic activity of Americans around the world and their impact accordingly, very little is known of European activity. It would be well worth a study in the Standing Senate Committee on Foreign Affairs to ascertain European impact on the world economy and the political environment. I would hope that the Senate would embark on a further phase of European analysis.

On motion of Senator Stollery, for Senator Grafstein, debate adjourned.

## ASIA-PACIFIC PARLIAMENTARY FORUM

EIGHTH ANNUAL MEETING—INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Carstairs calling the attention of the Senate to the Eighth Annual Meeting of the Asia-Pacific Parliamentary Forum, held in Canberra, Australia, from January 9 to 14, 2000.—(*Honourable Senator Hays*).

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to congratulate Senator Carstairs on her fulsome presentation on the activities that took place at the Eighth Annual Meeting of the Asia-Pacific Parliamentary Forum in Canberra, Australia. My only comments will be on the fact that we now serve on the executive committee of the Asia-Pacific Parliamentary Forum. We are essentially in a group with the United States. Working with them, we are now the representative of the northern part of North America. In that context, we have now put ourselves in a position to do some excellent work in ensuring that the association evolves into an even more productive one than it is already.

• (1140)

The comments of Senator Carstairs about Canada working with China, which has also joined the executive committee, were most useful. Senator Carstairs, and others who are active, provide a base of people within the Senate who are able to comment on what is obviously a great preoccupation of some senators in this place. I refer to the human rights record of China and what is actually happening in regard to Canada's policy of engagement in China and other countries.

I also wish to comment on the importance of an additional element that will be new as a result of Canada's initiative in the next Asia-Pacific Parliamentary Forum meeting in Valparaíso, Chile, namely, a round table discussion, which will be a useful addition to the plenary meetings of the forum as we work toward a consensus resolution. Essentially, this means that the proposed resolutions evolve into something with which everyone can agree. The idea of the round table will not be to reach agreement but, rather, to have a full and frank discussion on an important issue — that is, two countries of the Asia-Pacific region.

Finally, our participants from this place, Senator Oliver, who was a former chair of the association, and Senator Carstairs, are to be commended. Senator Carstairs covered that point very well. It was a great honour for me to be able to participate in the meeting for the last time in a leadership role. Having been

responsible for that forum from 1994 to 1999, I have retired from that role.

**Hon. Marcel Prud'homme:** Honourable senators, I am one of the founders of the Asia-Pacific Parliamentary Forum, which goes back many years. I am extremely interested in the subject. However, I do not think it is fair to make a speech on it today.

On motion of Senator Prud'homme, debate adjourned.

## NATIONAL FINANCE

COMMITTEE AUTHORIZED TO APPLY DOCUMENTATION  
ON STUDY OF EMERGENCY AND DISASTER PREPAREDNESS  
FROM PREVIOUS SESSION TO CURRENT STUDY

**Hon. Lowell Murray,** pursuant to notice of April 6, 2000, moved:

That the papers and evidence received by the Subcommittee on Canada's Emergency and Disaster Preparedness in the First Session of the Thirty-sixth Parliament be referred to the Standing Senate Committee on National Finance for the completion of the study.

He said: Honourable senators, I wish to give a few words of explanation concerning this motion. During the First Session of this Parliament, the Standing Senate Committee on National Finance appointed a subcommittee under the chairmanship of our friend Senator Stratton to inquire into policy concerning disaster preparedness at the federal level. The subcommittee made very good progress. Unfortunately, it was overtaken by events, that particular event being the prorogation of the First Session of this Parliament.

When we began our work in the Second Session of the Thirty-sixth Parliament, it was decided that we should resume that study as a committee and seek to put the finishing touches on it. Therefore, as a committee, we decided to devote four meetings to the matter. We believe that it would be helpful and important to have these documents become an official part of the record of our committee in this Second Session of the Thirty-sixth Parliament. I commend this motion to the support of honourable senators.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned until Monday, April 10, 2000, at 4 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 36th Parliament)**  
**Friday, April 7, 2000**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	0	99/12/16		
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02	00/04/04	Transport and Communications					
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21	00/04/04	Foreign Affairs					
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21	00/04/06	Banking, Trade and Commerce					

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29	00/03/28	Legal and Constitutional Affairs					
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99

C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	Subject matter 99/11/24	99/12/06	99/12/09	
		99/12/06	Social Affairs, Science and Technology	99/12/07	2	
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	Legal and Constitutional Affairs	99/11/30	4	99/12/08 00/03/30 1/00
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	Aboriginal Peoples	00/03/29	0	
C-10	An Act to amend the Municipal Grants Act	00/03/28				
C-13	An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts	00/03/30	Social Affairs, Science and Technology	00/04/06	0	
C-20	An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference	00/03/21				
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	-	-	99/12/16	99/12/16 36/99
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23	-	-	00/03/29	00/03/30 3/00
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23	-	-	00/03/29	00/03/30 4/00

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0	00/03/21	00/03/30	2/00
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							

## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							



S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02		
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03		
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.) <i>(Dropped from Order Paper pursuant to Rule 27(3) 00/02/08)</i> <i>(Restored to Order Paper 00/02/23)</i>	99/11/04		
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18		
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16		
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimard)	00/02/22		
S-20	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	00/04/05		

## PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	-	-	-	99/12/08	00/03/30	



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CANADA

# Debates of the Senate

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36th PARLIAMENT

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OFFICIAL REPORT  
(HANSARD)

Monday, April 10, 2000

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Monday, April 10, 2000

The Senate met at 4:00 p.m., the Speaker in the Chair.

Prayers.

### NEW SENATORS

**The Hon. the Speaker:** Honourable senators, I have the honour to inform the Senate that the Clerk has received certificates from the Registrar General of Canada showing that the following persons, respectively, have been summoned to the Senate:

John Edward Neil Wiebe  
Thomas Benjamin Banks, O.C.

### INTRODUCTION

**The Hon. the Speaker** having informed the Senate that there was a senator without, waiting to be introduced:

The following honourable senators were introduced; presented Her Majesty's writs of summons; took the oath prescribed by law, which was administered by the Clerk; and were seated:

**Hon. John Edward Neil Wiebe**, of Swift Current, Saskatchewan, introduced between Hon. J. Bernard Boudreau, P.C., and Hon. Joyce Fairbairn, P.C.

**Hon. Thomas Benjamin Banks, O.C.**, of Edmonton, Alberta, introduced between Hon. J. Bernard Boudreau, P.C., and Hon. Nicholas W. Taylor.

**The Hon. the Speaker** informed the Senate that the honourable senators named above had made and subscribed the declaration of qualification required by the Constitution Act, 1867, in the presence of the Clerk of the Senate, the Commissioner appointed to receive and witness the said declaration.

• (1610)

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, it is with genuine pleasure that I welcome to this chamber our two new colleagues, Senators Jack Wiebe and Tommy Banks. Both have built careers that have made them very well known and admired in their respective fields.

Senator John Wiebe is very familiar with the rough and tumble political life, particularly coming as he does from the province of Saskatchewan which has given the Senate some of its most illustrious members, past and present. Senator Wiebe was twice elected to the Saskatchewan Legislative Assembly in the 1970s, and more recently, he has just completed his term as Lieutenant Governor of the province. He is very familiar with public life.

He is equally familiar with the economic engine of Saskatchewan, namely, the agricultural industry. When he said that agriculture was something he had done all his life, he was not exaggerating. Senator Wiebe is a long-time farmer. He has been very involved with the cooperative movement and has served on the Main Center Wheat Pool Committee, the Herbert Credit Union, the Herbert Co-op, and the Saskatchewan Co-operative Advisory Board. From 1970 to 1986, he was owner and president of L&W Feeders Ltd.

His personal success, balanced with a strong commitment of public service to his province and to his community, has made Senator Wiebe sensitive to the aspirations and challenges of fellow citizens. As Premier Romanow said earlier this year:

Jack Wiebe has a tremendous capacity to relate to the everyday issues and concerns of the people of this province.

It is this understanding and empathy, together with his undoubted expertise about agricultural matters in particular, that will make Senator Wiebe such a strong and welcome addition to this chamber.

Senator Banks has taken a less traditional route to the Senate, but a route not any less interesting or worthy. The fact that he is popularly known as "Mr. Edmonton" tells us more about the man than a mere dissertation of honours he has garnered over the course of a long and rewarding musical career. This is not to say that a Gemini Award, a Juno Award, an officer of the Order of Canada, and an Honorary Diploma of Music from MacEwan College are not noteworthy in their own right. These are just a partial listing of the honours that have been bestowed upon our newest colleague.

The title of "Mr. Edmonton" is an indication of the popular acclaim and affection he enjoys in his home province and hometown.

Given that my background is law, I would be the last to suggest that there are too many lawyers in the Senate. However, with the arrival of Senator Banks, we add a new talent and a new perspective to our endeavors. A country is not held together by laws alone; it needs a culture, a soul. Senator Banks, Mr. Edmonton, has nurtured that soul of our country for more than 40 years and, in my view, it is high time that he take his place in this chamber, not only in his own right but also as a representative of a community that has brought so much enrichment and so much joy to Canadians.

To him, and to Senator Wiebe, I say: Welcome to the Senate. We all look forward to the addition that you will make to our work."

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I am pleased to join with the Leader of the Government in welcoming our new colleagues on behalf of all senators of the P.C. caucus. There is little that I can add to what Senator Boudreau has already said. His was an excellent summary of the qualities and experience which the new senators bring to this place.

I wish to stress Senator Wiebe's familiarity with the western agricultural situation, which will be of particular value at a time when comparisons with the Depression are, sadly, not exaggerated. His colleagues from Saskatchewan on both sides, led by Senator Gustafson, have been giving western farmers the highest of priorities, and another knowledgeable voice at this time is more than welcome in the Senate.

Senator Boudreau, in outlining Senator Banks's background, neglected to mention, no doubt as an oversight, one of the highlights of his career. In 1983, our new colleague took out membership in the Progressive Conservative Party of Canada. This is not a day to indulge in too much partisanship, but I want to tell Senator Banks that if at any time he wants any help in renewing that membership, any one of us on this side would be more than willing to lend a hand.

• (1620)

I should like to say to both of our new colleagues: I wish you the very best and look forward to your participation as you assume your new responsibilities in the Senate.

Congratulations.

## SENATORS' STATEMENTS

### APOLOGY TO THE HONOURABLE RON GHITTER

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I should like to read to you a statement that will be published in the *Calgary Herald*, *The Calgary Sun* and *The Edmonton Journal* on Friday, April 14. It will be entitled, "Apology to Senator Ghitter from Rob Anders, MP, and Ezra Levant".

In September of 1998, we unfairly and inaccurately described the character, statements, commitment and work of Senator Ghitter in a fundraising letter circulated to 31,000 Albertans in connection with the Alberta Senatorial Election. The letter was prepared by Ezra Levant and signed by Rob Anders on behalf of the Reform Party of Alberta.

The letter was insulting and demeaning of Senator Ghitter who has dedicated over 30 years of his life to public service both as an elected member of the Legislature of Alberta, a member of the Senate of Canada, a spokesman for minorities, and a volunteer in many capacities.

On September 25, 1998, Senator Ghitter requested that we retract our statements and donate \$2,500.00 to the Alberta Cancer Society. We refused to do so, and instead made further inaccurate and demeaning public statements about Senator Ghitter through various media outlets. On October 21, 1998, Senator Ghitter commenced a defamation action against us.

Our attack on Senator Ghitter was unfounded and we now admit having defamed Senator Ghitter. We further acknowledge that some of our statements were based on facts that were false and on out of context interpretations.

We regret preparing and sending the letter and wish to apologize to Senator Ghitter and his family for our lack of civility and our inappropriate actions and comments.

Rob Anders, M.P.  
Ezra Levant

### NATIONAL VOLUNTEER WEEK

**Hon. Sharon Carstairs (Acting Deputy Leader of the Government):** Honourable senators, National Volunteer Week is a special time set aside in April to honour the people who donate their time and energy to the benefit of their fellow citizens. It is also meant to raise awareness of the vital contribution volunteers make to our communities and to the identity and values of our country.

In the fall of 1997, more than 18,000 Canadians, aged 15 and over, were interviewed by Statistics Canada as a supplement to the national labour force survey. The National Survey of Giving, Volunteering and Participating found that almost one in three Canadians volunteer their time. Almost three in four Canadians help people directly by doing housework, driving someone to appointments, or providing some other assistance. Four in ten Canadians give money directly to people who live outside of their home.

Canadians gave more than \$4.5 billion in donations in 1997, with an average donation of \$239. Canadians spend an additional \$1.28 billion on non-profit goods, raffle or lottery tickets, and charitable gambling.

I should like to pay tribute today to all Canadians who work to better their community through volunteering. In particular, though, I should like to pay special tribute to a volunteer from Calgary by the name of Margaret Newell. Margaret Newell is the Chair of the *Prairieaction* Foundation. In partnership with donors, the *Prairieaction* Foundation supports solutions to violence and abuse by sustaining RESOLVE and other Canadian charities seeking solutions to violence and abuse.

Margaret has worked tirelessly over the past three years to establish an endowment fund to provide long-term research funding to issues of family violence and violence against women. Through the work of Margaret and other volunteers with the *Prairieaction* Foundation, the foundation has now raised \$4.6 million of its \$5-million goal.



I salute her and all volunteers who individually and collectively work to make Canada the very best country in the world in which to live.

### YOUTH MANIFESTO

**Hon. Mabel M. DeWare:** Honourable senators, I was privileged to attend a special ceremony this morning. Here in this chamber, delegates from the World Parliament of Children presented to the Parliament of Canada — to Senator Molgat and Speaker Parent — a “Youth Manifesto for the 21st Century”.

The Youth Manifesto was read to us this morning by young people from Canada, Australia, the Bahamas, Bulgaria, Burkina Faso, France, Kenya, Northern Ireland, Norway, the Republic of Korea, Russia and Sri Lanka. It is a compelling document, and I invite all honourable senators to read it for themselves.

The Youth Manifesto defines young people's expectations in terms of how they want the world to be in the century that has just begun. They envisage a world of peace, and that is very fitting because 2000 is the International Year for the Culture of Peace, and the International Decade for a Culture of Peace and Non-violence for Children of the World starts next year. They see affordable, universally accessible education as one of the keys to that world of peace, along with the fulfilment of the basic human needs, and solidarity, which they define as caring for others and respecting them. They point, as well, to the need to respect the environment, to promote culture, communication, and intercultural dialogue.

However, the Youth Manifesto does not just set forth a series of grand ideals — it also proposes some well-thought-out, concrete ways in which the people and governments of different countries can help make these expectations a reality.

The “Youth Manifesto for the 21st Century” resulted from the first World Parliament of Children, which was sponsored by the United Nations Educational, Scientific and Cultural Organization. It brought together 380 high school students from some 175 countries — I believe they were from age 12 to 16 — who met in Paris, France, last October. The Youth Manifesto was presented to UNESCO's General Conference on October 26, 1999. This year, it is being presented to all heads of state or government, and to the speakers of Parliaments. Today, the Canadian Parliament had the honour of being the first Parliament in the world to receive the Youth Manifesto since it was presented to UNESCO.

It is clear that the young people from Canada and other countries who drafted the “Youth Manifesto for the 21st Century” are the leaders of tomorrow. I know that all

honourable senators will join me in applauding their enthusiasm, insight and commitment.

To end, I should like to read to you a small passage that was written by Ralitzza Houbanova, from Bulgaria. On her invitation to Canada, she wrote:

Thank you from the whole of my heart for making this dream come true!!! You have just warmed a few passionate hearts beating strongly and impatiently to meet once again in a country called Canada under the protective “wing” of a maple leaf.

### NATIONAL VOLUNTEER WEEK

**Hon. Catherine S. Callbeck:** Honourable senators, I, too, rise to highlight that this week, April 9 to 15, is National Volunteer Week.

It is interesting to note that National Volunteer Week was first proclaimed in 1943 by the Women's Voluntary Services, to draw the public's attention to the vital contribution women made to the war effort on the home front. From that day forward, it has grown in importance and now the third week in April is firmly established as the highlight of the year for paying tribute to Canada's volunteers.

It is important for this chamber to recognize volunteers during this week and throughout the year because of the essential contribution they make to the quality of life in our communities and in society as a whole. On that note, every year the Governor General honours volunteers with the Annual Caring Canadian Award. This award is given to individuals for their unpaid voluntary contributions, which most often take place behind the scenes and at the community level.

A number of the honourees this year — five to be exact — were from Prince Edward Island. I should like to recognize these individuals for their efforts and dedication to their community. They are Mr. Tom DeBlois, from Charlottetown, for his outstanding contributions to health care on the Island; Ms Helen Flora MacIsaac, from Souris, who organized the first door-to-door canvass in the Souris area for the Canadian Cancer Society and was a founding member of Literacy Canada; Ms Darlene Harper, Ms Cathy Carragher and Ms Gina Rankin from Cornwall, who all spent a year planning, promoting and fundraising for the building of the Eliot River Dream Park, a place for children to play.

• (1630)

The work accomplished by these five individuals is an excellent example of the type of work being conducted in this country and of the impact an individual can make on the lives of others.

With volunteerism on the rise among all age groups, in fact doubling among those between the ages of 15 to 24, I am confident that the future is in good hands.

[Translation]

## ROUTINE PROCEEDINGS

### INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

#### EIGHTH REPORT OF COMMITTEE PRESENTED

**Hon. Pierre Claude Nolin**, Deputy Chair of the Standing Senate Committee on Internal Economy, Budgets and Administration, presented the following report:

Monday, April 10, 2000

The Committee on Internal Economy, Budgets and Administration has the honour to present its

#### EIGHTH REPORT

Your Committee wishes to inform the Senate that an action plan on Accessibility for Persons with Disabilities has been adopted. This action plan, which was established in close co-operation with representatives of the disabled community, includes the following achievements to date:

- i) On December 2, 1999, a Senator's Guide to Disability was tabled in the Senate;
- ii) A draft Trainer's Guide was developed aimed at complementing the Senator's Guide to Disability;
- iii) A Co-ordination Office was created to implement the action plan and to ensure the continuity of this project;
- iv) On February 24, 2000, the Honourable Senator Carstairs and the Honourable Senator Robertson presented to the Committee on Internal Economy, Budgets and Administration the Senate Action Plan on Accessibility for Persons with Disabilities, which was subsequently approved by the Committee;
- v) On March 30, 2000, an Information Kit was released, which included not only the Senator's Guide to Disability but also the 12 point and 16 point printed versions of the Senate Action Plan plus an audio tape and CD versions of this action plan; and
- vi) Your Committee is in the process of developing a Braille version, which will be available by mid-April 2000 and will be included in the Information Kit.

Your Committee is proposing the following initiatives be implemented during the fiscal year 2000-2001:

- vii) A Disability Information Kit will be finalized and sent at large by the Speaker to provincial Legislative

Assemblies in addition to all our Commonwealth counterparts, inviting them to highlight their respective initiatives taken towards disabled persons:

- viii) A Senate Disability Guide for staff will be developed;
- ix) A series of training sessions on disability issues for managers and staff will be developed and conducted;
- x) A proactive access to the Senate Internet will be also developed; and
- xi) Accessibility issues will be incorporated with the Senate Intranet.

Your Committee wishes to thank Senators Carstairs and Robertson for their work on this project and recommends the adoption of this report by the Senate.

Respectfully submitted,

PIERRE CLAUDE NOLIN  
*Deputy Chair*

**The Hon. the Speaker:** When shall this report be taken into consideration?

On motion of Senator Nolin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

### A BILL TO CHANGE THE NAME OF CERTAIN ELECTORAL DISTRICTS

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-473, to change the names of certain electoral districts.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Carstairs, bill placed on the Orders of the Day for second reading on Wednesday next, April 12, 2000.

[Translation]

### TRANSPORT AND COMMUNICATIONS

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Lise Bacon:** Honourable senators, I give notice that on Tuesday, April 11, 2000, I will move,



That the Standing Senate Committee on Transport and Communications have power to sit at 5:30 p.m. on Wednesday April 12, 2000 for its study of Bill S-17, respecting Marine Liability, and to validate certain bylaws and regulations, even though the Senate may then be sitting and that rule 95(4) be suspended in relation thereto.

[English]

**BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

**NOTICE OF MOTION TO INSTRUCT COMMITTEE TO AMEND**

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I give notice that tomorrow, Tuesday, April 11, 2000, I will move:

That upon committal of Bill C-20 to committee, the committee be instructed to amend Bill C-20 to rank the Senate of Canada as an equal partner with the House of Commons, and report back accordingly.

## QUESTION PERIOD

### PUBLIC WORKS AND GOVERNMENT SERVICES

**ALLEGED INVOLVEMENT OF PRIME MINISTER'S OFFICE IN PURCHASE OF PROPERTY IN HULL, QUEBEC**

**Hon. Marjory LeBreton:** Honourable senators, last Friday, in the *National Post*, there was a very interesting story involving the Prime Minister's Office; the Prime Minister's chief of staff; several ministers of the Crown; the head of the Prime Minister's election strategy group, Mr. John Rae; and an Ottawa lobbyist and personal friend and golf buddy of the Prime Minister, Mr. Hugh Riopelle. The article reported on the efforts of those people to ensure that the government purchase an office building in Hull from a well-known Liberal businessman, Pierre Bourque Sr.

As I mentioned last week, there appeared to be a great deal of activity going on behind the scenes on Mr. Bourque's behalf. It is reported that Mr. Bourque, who contributed a "substantial sum" of money to Mr. Chrétien's 1990 leadership campaign, has fallen on hard times and has said he needs to make \$8.3 million on the sale of the Louis St. Laurent building in Hull in order to get out of debt.

It is of particular interest that in February Mr. Bourque met with Mr. John Rae, the head of Mr. Chrétien's election strategy committee, who is reported to have said:

I have known him for a long time. We are not intimate friends at all.... It is not a secret that he has had some financial difficulties and I did give him some assistance.

Why would one of the Prime Minister's closest confidants give money to Mr. Bourque in the midst of negotiations regarding the sale of a building in Hull? How much money was involved and what could possibly be the reason behind this? Are we to assume that Mr. Rae is involved in the negotiations for the sale of the building?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, neither I, nor anyone occupying my office, would be in a position to respond to some of the honourable senator's questions. I can make no judgment upon what Mr. Rae's relationship may have been with any individual. I can only say that I am not aware of any representations made by Mr. Rae on behalf of the individual in question. In fact, I believe that the decision to which the honourable senator refers was not made by the government. In fact, that decision has not been made. Therefore, I am not sure in what manner the honourable senator feels it is important for a representative of government to comment on the matter.

**Senator LeBreton:** Honourable senators, I did not say the decision was made by the government. I said that there was pressure put on the government.

Honourable senators, the same story states that several ministers resisted pressures from the Prime Minister's Office, Minister Gagliano and the Prime Minister's lobbyist friend to go along with this deal, but that several did go along with it, including the Minister of Justice, the Solicitor General of Canada and the Leader of the Government in the Senate. Is this true? Did the Leader of the Government in the Senate agree to support this? Can he explain why there is so much interest in solving Mr. Bourque's financial difficulties?

**Senator Boudreau:** Honourable senators, I believe that the deliberations referred to in that article were deliberations of the Treasury Board, which is a committee of cabinet. All such discussions remain confidential regardless of speculation about what was said and who supported which measure. It has always been the case, and I hope always will be, that those discussions remain confidential.

I can, however, tell the honourable senator two things. First, with regard to the suggestion that John Rae exerted pressure, he exerted no pressure on myself. Second, a decision was not taken by Treasury Board.

**Senator LeBreton:** Honourable senators, are we missing something here? Why would Mr. John Rae, one of the Prime Minister's closest confidants, intervene to assist Mr. Bourque financially? Why are people consumed with resolving the financial difficulties of Mr. Bourque? Why would someone in Mr. Rae's position be involved? What is going on here?

**Senator Boudreau:** Honourable senators, I have no idea why Mr. Rae or anyone else might support an individual. I can only say, as a person involved in the Treasury Board committee, that there were no representations made to me or, to my knowledge, anyone else. I must qualify that by saying that I can speak only of my own knowledge. There were no representations made to me by Mr. Rae on behalf of that individual. The decision speaks for itself.

**Hon. Pierre Claude Nolin:** Honourable senators, apart from the discussion that the Leader of the Government in the Senate had at the committee of Treasury Board, what is his personal knowledge of the status of that building in Hull? What does he know about that story?

• (1640)

**Senator Boudreau:** Honourable senators, any knowledge I have of the status of the building would have come from discussions within Treasury Board. I have no knowledge of it otherwise, so I cannot make any further comment.

**Senator Nolin:** Has the honourable senator met with Mr. Bourque or any of his representatives?

**Senator Boudreau:** I have never met with Mr. Bourque. I would not know him if he walked into the room.

**Senator Nolin:** Has the honourable senator met, been called or been contacted by any of his representatives?

**Senator Boudreau:** No.

**Senator LeBreton:** Honourable senators, I have another supplementary question.

Did the Prime Minister's Chief of Staff, Mr. Pelletier, or Mr. Hugh Riopelle lobby Minister Boudreau on behalf of Mr. Bourque?

**Senator Boudreau:** I was not lobbied by anyone. I do not know the first individual you mentioned — Mr. Riopelle?

**Senator LeBreton:** Mr. Pelletier?

**Senator Boudreau:** I do know Mr. Pelletier, but no one lobbied me on behalf of Mr. Bourque. Discussions take place within cabinet committees, as one might expect, and they remain confidential. I can only come back to the fundamental point, once again, that whatever the suggestions might be by some, a decision was clearly taken by the Treasury Board.

## ORDERS OF THE DAY

### NISGA'A FINAL AGREEMENT BILL

#### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement;

And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence.

**Hon. Gerald J. Comeau:** Honourable senators, over the years I have had a keen interest in fisheries issues. This is because I have seen first-hand the profound impact that government actions can have on the lives of people of resource-dependent communities. These are my neighbours and my friends.

What some may view as simple bureaucratic decisions can sometimes make or break communities and permanently alter the way of life of generations of families. Decisions made in far-away Ottawa — quota controls, licensing, regulations, allocations of stocks — are not abstract actions. They can profoundly impact the lives, well-being and futures of countless families.

Urban-based parliamentarians, who make up the majority of federal parliamentarians, may be amazed at the magnitude of even the most simple changes of the rules. For this reason, I review all bills that refer to fisheries. It was with this in mind that I initially reviewed the Nisga'a treaty, the basis of Bill C-9. I had no axe to grind. The Nass River Valley is far away from my home province. Who am I to question the need to solve a long-standing conflict to do right by the Nisga'a nation?

Furthermore, it is evident that the Nisga'a have a historical attachment to the fisheries resource of the Nass Valley. It is only fair that they should be assured of continued access.

My reading, therefore, was simply to review the means — the instrument — by which the government would accomplish the allocation. I had also heard the suggestion that we should trust our government and pass the bill quickly. On the other hand, I subscribe to the old Arab saying, which goes something like this: "In God we trust...but it is still a good idea to tie your camel."

Honourable senators, I wanted to ensure that we did not create a precedent we might later regret. I must admit that I was also somewhat concerned that Minister Bob Nault was directing this file. I had witnessed the insensitive conduct of the minister following the Supreme Court *Marshall* decision in Atlantic Canada.



Without getting into the subject or the controversy surrounding the Supreme Court decision in Atlantic Canada, suffice it to say that there was a great deal of emotion immediately following the decision. While Atlantic Canadians were reeling in shock following the initial Supreme Court decision and while emotions were highest and concerns were the greatest, when calm and reason were required; Minister Nault was running around Atlantic Canada provocatively proclaiming that nothing was safe any more for the people who, for centuries, had depended on the resource of the land and the sea for their livelihood. Everything was up for grabs, according to Mr. Nault: provincial Crown forests and mines, fish, blueberries, mineral resources, natural gas, oil and hunting. He announced that the Supreme Court ruling would bolster treaty claims to national resources right across the country.

Few in Atlantic Canada will soon forget Minister Nault on prime time television during this explosive time, on a visit to an aboriginal community in Nova Scotia, symbolically feasting on lobsters like a modern-day Henry VIII, with Atlantic Canadians feeling like Anne Boleyn.

Minister Dhaliwal, to his credit — and God bless him — kept a low profile and allowed the shock to set in before he added his calm, soothing voice to settle the troubled waters, if you will allow me that metaphor. Minister Nault, therefore, did not inspire confidence to trust his judgment.

Honourable senators should be aware that the Crown and Parliament do not own the resources in tidal waters. The fish are owned by the public. It is a common property resource. The federal government is the steward of those fish. Therefore, it has no right to give that resource away as it sees fit.

I should like to cite once again, as I have done before in this chamber, former chief justice of the Supreme Court of Canada Antonio Lamer:

It has been unquestioned law that since Magna Carta no new exclusive fishery could be created by Royal grant in tidal waters, and that no public right of fishing in such waters, then existing, can be taken away without competent legislation.

I refer to *R. v. Gladstone*, a decision of the Supreme Court of Canada on August 21, 1996.

The *Gladstone* decision went on to state:

...it was surely not intended that, by the enactment of s. 35(1), those common law rights would be extinguished in cases where an aboriginal right to harvest fish commercially existed.

Others interpret this Canadian position in the same way. I should like to refer to the journals of Maritime Law Association of Australia and New Zealand, which refers directly to the subject.

In Canada, claims to exclusive fisheries have also met with equal lack of success.

I should note that section 7 of the Fisheries Act allows the cabinet to seek the consent of Parliament for legislative authority to reserve exclusive fisheries allocations.

As far as I have been able to determine, no such legislative authority has ever been requested in Canadian history. There has never been a request to create an exclusive fisheries allocation which would exclude other Canadians access. The Nisga'a agreement, therefore, is a historic precedent.

Disregarding for the moment the merits of the fish allocation to the Nisga'a — and I do not dispute the noble goal of providing access to the Nisga'a — senators should be aware that chapter 8 of the Nisga'a treaty reserves a permanent allocation of 17 per cent of the Nass River total allowable catch of salmon to Nisga'a citizens. Furthermore, paragraph 2 of chapter 8 provides that the allocation becomes a section 35 protected treaty right and, significantly, paragraph 71 of chapter 8 establishes paramountcy of the Nisga'a nation over this fishery. Other senators will be speaking on the subject of paramountcy in much more eloquent terms than I could.

Notwithstanding Justice Lamer's straightforward comments on the subject of exclusive allocations, an obscure Justice lawyer appeared before the committee to announce that an allocation of fish to the Nisga'a was not an exclusive fishery in the legal sense because the remaining stocks were open to others.

The fact that those rights apply only to the Nisga'a would not, in law, amount to creating an exclusive fishery because it simply does not deny the public right of access to the fishery as well.

With no parliamentary reflection or public consultation, this obscure Justice lawyer therefore establishes historic exclusive fisheries parameters which may significantly and forever impact the lives of thousands of coastal residents. Minister Nault and Senator Austin repeat this flawed reasoning to justify their claim that this is not an exclusive allocation. They propose that all of the following conditions would have to be met in order for it to be an exclusive fishery in the legal sense contemplated by the Magna Carta. These would be the parameters that would be needed: the resource in the water would have to be the "private property right" of the owner; 100 per cent of the fish would have to be the exclusive property of the owner; the exclusive owner would have the right to close off any part of the river to prevent others from fishing under ordinary law and to prevent navigation over the waters; the owner would have the exclusive rights to sell the resource; and the minister's duty to conserve the resources and set the TAC would be taken away. Pardon the nautical pun, but this is a red herring.

An exclusive fishery is created when a specific percentage of a fish stock is permanently reserved for the exclusive benefit of a particular group of people.

• (1650)

It is exclusive because others are forever denied the allocation and are forever denied the right to join that group. The exclusiveness arises from the fact that certain categories of Canadians are excluded from ever having access to the particular allocation. This is not rocket science.

Chapter 8, page 103 of the agreement refers to Nisga'a fish entitlements which are held by the Nisga'a nation. I invite Senator Austin to look up the words "entitlement" and "exclusive" in any dictionary. Regardless of how one wishes to define the allocation, there is a specific allocation of 17 per cent reserved for the exclusive benefit of the Nisga'a.

I wish to point out another significant precedent. Issue Paper 16, page 16, number 4 states:

The Nisga'a Final Agreement provides a process for establishing allocations for non-salmon species after the effective date of the final agreement and provides criteria on which these allocations will be based....Crab, halibut, prawns and shrimp, herring and kelp have been identified as species for which allocations will be set, once the appropriate harvest and biological studies are compiled.

Parliament gives the power to cabinet over future allocations of other species — not only present ones but also future ones. In other words, Parliament is saying to the cabinet, "Here is a blank cheque — by the way, with our signature on non-salmon stocks. Do with it as you see fit. We trust you. Go ahead." Do we really want to create a regime whereby we say to cabinet, "Take the fish resources," which are not ours to give, "give it as you see fit and place it under section 35 protection so that we can never again reconsider our decision?" I ask honourable senators to reflect on the fact that this agreement is forever out of the reach of parliamentarians.

I also invite honourable senators to review the amendment provisions on page 23 of the agreement. I refer to section 37, which states:

Canada will give consent to an amendment to this Agreement by order of the Governor in Council.

That, of course, is the cabinet.

Section 38 states:

British Columbia will give consent to an amendment to this Agreement by resolution of the Legislature of British Columbia.

What I find interesting is that the judgment of B.C. legislators is trusted to approve amendments in the future but federal parliamentarians cannot be trusted to give their assent to future

amendments. What else is new? The government has shown, in the clarity bill, that it does not trust our judgment on the breakup of the country. Why should it trust our judgment on treaties?

The legislation to implement the Nisga'a treaty cannot be amended by Parliament after it is passed. It permanently removes the 17 per cent Nass River stock and all non-salmon stocks from parliamentary jurisdiction and transfers this authority to the cabinet forever. The cabinet will then assume the legislative power to sign amendments to the treaty. I invite senators to cite any instances or precedents whereby Parliament has permanently abdicated such parliamentary responsibility. Given that Parliament is permanently abdicating all such legislative authority and responsibility over the salmon stock to the cabinet, is abdication of legislative power to the executive not a constitutional amendment?

I suggest that we do not have the legislative authority to remove forever the public right to fish allocation by placing it under section 35 protection. We cannot abdicate forever our responsibility and jurisdiction of stewardship over this common property resource.

Honourable senators will know that Minister Nault has been appointed lead minister to settle the questions on East Coast native long-term allocations. I must admit to the fear that Minister Nault may be tempted to apply this new-found allocation scheme to East Coast fisheries to settle native demands for access. The danger is that the Nisga'a salmon allocation will become the precedent or model for the government to solve the East Coast lobster dispute created by *Marshall*. This is even more alarming considering the fact that Minister Nault is the advocate of aboriginals in cabinet.

I remind honourable senators that the government is of the view that this is not an exclusive fishery and that it is quite normal for government to allocate exclusive fish resources to groups and remove the legislative responsibility of parliamentarians over these stocks. When I expressed these concerns to Senator Austin in this chamber the week before last week, the senator responded that this was a political decision and that he did not wish to discuss the extension of this policy. Indeed, if this is now the policy of this government, I fear that there may not be a future for Atlantic Canada's existing fishing communities.

What stops this government or future governments from creating these entitlements with respect to other West Coast salmon stocks, East Coast lobsters, snow crab, tuna, scallops and groundfish?

When asked whether the government had sought legal advice regarding this fish allocation, other than from the Justice Department, Minister Nault admitted that the government had not hired someone specifically outside of the Department of Justice. In fact, the only name provided was Senator Beaudoin, my esteemed colleague to my right. Senator Beaudoin informs me that he was not asked for, nor did he provide, legal or constitutional advice on this particular subject.



Parliament is here to keep a check over government decisions. We should not squander our parliamentary oversight responsibility. We should not place blind trust in cabinet. The Prime Minister, as the situation is now, has too much power, along with his PMO staff. It is not in our interest to hand over our parliamentary responsibility to the Prime Minister. The cause may be right but the means to an end may not be worth the price.

I invite all honourable senators to reflect carefully on the ramifications of this precedent, and I call on colleagues from resource-based regions especially to consider very carefully whether they wish to set this precedent, thereby providing to this minister and to future Indian affairs ministers the means to constitutionalize fisheries allocations in perpetuity.

On motion of Senator Carstairs, for Senator Christensen, debate adjourned.

## CANADIAN INSTITUTES OF HEALTH RESEARCH BILL

### THIRD READING

**Hon. Sharon Carstairs (Acting Deputy Leader of the Government)** moved the third reading of Bill C-13, to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts.

Motion agreed to and bill read third time and passed.

## BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Gérard-A. Beaudoin:** Honourable senators, our Constitution of 1867 is silent on the secession of a province. We have had, of course, full powers of amendment since 1982, and a secession may take place by a constitutional amendment. Any provision or clause of the Constitution may be amended. Our Constitution is also silent on the referendum. Parliament and the provinces may adopt legislation on referenda. A referendum is facultative in our system.

A reference was made to the Supreme Court in 1996 to know whether a province may declare its independence unilaterally, according to the Constitution, or according to international law. The court said no in both cases. The court added that, with a clear question in a referendum and a clear result, there was a constitutional obligation for the federal authority and the other provinces to negotiate secession in the respect of great principles of our parliamentary democracy, like constitutionalism and the rule of law, federalism, democracy, and respect for minority rights.

It is up to the "political actors", said the court in the reference, to negotiate. Negotiations may be made by an executive declaration, as has been the case for a century, or by legislation. I was a bit surprised when I realized that the government was using the legislative way, the legislative path. It is probably more impressive but it is certainly much less flexible.

• (1700)

The Supreme Court in its advisory opinion declared expressly that the negotiations after a referendum on secession were to take place in the political arena, and that the court would have no supervisory role over those negotiations.

[Translation]

The clarity bill stipulates that it is up to the House of Commons, and only the House of Commons, to determine the clarity of the question and of the outcome of the referendum and to order the government to negotiate or not. The Senate has nothing more than an advisory role in this respect.

According to Bill C-20, the House of Commons shall, within thirty days after the tabling of the question in the legislative assembly of the province in question, determine the clarity of the question. This decision is made via resolution. The question must deal only with secession, not a mandate to negotiate or offer other possibilities — partnership, economic or political association — which would lend ambiguity to the expression of the will of the population of the province concerned.

Similarly, the House of Commons determines whether a clear majority of the population concerned has clearly voted in favour of secession. In this connection, the House of Commons must take the following factors into account: the size of the majority of valid votes cast in favour of the secessionist option, the percentage of eligible voters voting in the referendum, and any other factor it considers relevant.

In both cases — clarity of question and majority — the House of Commons must take into account the views of all political parties represented in the legislative assembly of the province concerned, those of other provincial or territorial governments, those of the aboriginal peoples, and those of the Senate. If the House of Commons decides the question is not clear, or the majority is not clear, the Government of Canada will not be allowed to enter into negotiations with the province concerned.

[English]

We must say here that as a parliamentary democracy Canada is obliged to follow certain rules. The legislative power is provided for, described and defined in the Constitution. Furthermore, many constitutional conventions, like responsible government and the vote of confidence, are in great part unwritten, but they are part of the Constitution. The Constitution is composed of three elements: the fundamental texts, the court cases and the conventions of the Constitution.

In our federation, the powers are divided between two orders of government mainly by sections 91 to 95 of the Constitution. Some powers are exclusive; a few are concurrent.

As a democracy, Canada includes an executive power, a legislative power and a judicial power that has the control of the constitutionality of laws. What is supreme in our country is the Constitution. It is stated clearly in the Constitution Act of 1982 that the supreme law of the land is the Constitution.

Bill C-20 also provides that, at the end of the negotiations to operate a secession, it is necessary to adopt a constitutional amendment. We have had five formulas of amendment since 1982. The court was not invited to say which formula is applicable in case of secession. Is it the unanimous formula, or the 7-50 formula — that is, Ottawa and seven provinces regrouping 50 per cent of the population? Bill C-20 does not deal with that subject either and jurists are divided.

[Translation]

Negotiations with respect to the terms of secession would address the following elements, among others: the debt, the boundaries of the seceding province, the rights, interests and territorial claims of aboriginal peoples, and the protection of minority rights.

Bill C-20 has come about as a result of the advisory opinion of the Supreme Court of Canada in the reference concerning the secession of Quebec. In fact, the bill's provisions refer to the relevant passages of the reference. Bill C-20 does not dictate the referendum question — indeed the question is the business of the provincial legislature alone. Nonetheless, Bill C-20 stipulates that, in such a case, the question must address one thing only — secession.

Nor does Bill C-20 set any threshold below which there would not be a clear majority. It will be up to the House of Commons to determine whether the majority is clear after the results of the referendum are known.

The purpose of Bill C-20 is to set out the conditions under which the Government of Canada would be permitted to enter into negotiations with respect to the terms of secession of a province.

There are three aspects of the bill that I think are open to criticism. First, the role of the House of Commons in examining the clarity of the referendum question and determining whether

the question is clear bears a strange resemblance to that of a court determining the rights of the parties.

[English]

Is this respectful of the spirit of federalism? In a federal state, the two orders of government are equal and sovereign in their respective spheres and, as I have already said, it is the Constitution that is supreme.

[Translation]

In my view, Bill C-20 would benefit from an amendment to change the notion of determining to that of declaring. This would be fairer and more respectful of the federalism which the Supreme Court has said is the overriding characteristic of our country.

Second, as for the Senate, and this is a basic point, Bill C-20 assigns it the marginal role of being consulted after the House of Commons has taken its decision. This runs counter to the legislative equality of the two houses.

[English]

The Senate is a legislative chamber like the House of Commons. Parliament is composed of two houses at the federal level. For legislation, the two houses are equal. They have the same powers, except in three areas: one, there is no vote of confidence in the Senate; two, a money bill shall originate in the House of Commons; and three, the Senate has a suspensive veto only in the case of a constitutional amendment.

However, we are not concerned here with a vote of confidence, with a money bill or with a constitutional amendment. We are concerned with a statute.

[Translation]

• (1710)

As the house of sober second thought, the Senate cannot be relegated to the role of a puppet or that of a lobby, as some have said, regarding the secession of a province from Canada. The Senate, which has done an excellent job of improving legislation over the years, must be able to play its role and express its opinion, through a resolution, on the clarity of the referendum question and results, just like the House of Commons. This is based on the fundamental principles of our parliamentary democracy.

Some have claimed that Bill C-20 does not confer legislative power to the House of Commons. In their opinion, the role given to the House under Bill C-20 is close to that of a vote of confidence. I do not agree with that view. Bill C-20 leaves intact the notion of vote of confidence. It does not even touch on it, and this is fine. Of course, the vote of confidence only exists in the House of Commons. It has been part of our constitutional conventions since 1847, if not 1846. However, by giving legislative power to only one house, our Parliament is going against the legislative equality of the two federal houses.



When the House of Commons adopts a resolution, it is a legislative measure, because the power to adopt that resolution comes from a legislative act. It comes directly from Bill C-20. It is the very exercise of that legislative power. In the 1992 *Sinclair* case, the Supreme Court of Canada ruled that an order in council — which, as we know, is from the executive branch — is part of the legislative process. In that case, it was section 133 of the Constitution. So, if an Order in Council is part of the legislative process, this is all the more true of a resolution. If we apply that principle to Bill C-20, we cannot break down the legislative process and exclude the Senate on the pretence that the resolution is not a legislative act. On the contrary, the adoption of a resolution is part of the legislative process. There is no valid reason to prevent our Senate from fully playing its role of equal legislative house. In my opinion, Bill C-20 should be amended accordingly.

I repeat, some will say that, when it comes to constitutional issues, the two Houses are not equal. It is true that the Senate only has a suspensive veto. This is an important point, but it was done through a constitutional amendment. It was not done through a simple act. By not putting the Senate on the same footing as the House of Commons, we are directly interfering with the legislative process of the parliamentary system that is part of the Canadian constitution.

[English]

If our Senate accepts its exclusion and if Bill C-20 is adopted as it is, it means that further federal statutes may follow the same pattern and, after a while, the powers of the Senate will be considerably reduced.

Honourable senators, why should we accept such an erosion? The pith and substance of Bill C-20 is to define the conditions under which the Government of Canada would negotiate the terms of the secession of a province from Canada.

I am in favour of clarity. This has always been my goal. If ever we have a third referendum in Quebec, I certainly would like to have a clear question.

[Translation]

Unfortunately, the question will probably never be clear, and this is my third point. According to Bill C-20 there will never be negotiations, because any discretion in such a case has been ruled out, and so a province could become independent illegally. In its opinion, the Supreme Court saw this clearly at paragraph 155 of the reference. Independence may come about illegally, indirectly, if I can put it that way, and based on international recognition.

It is at this point that I think we realize how much better it is to negotiate by making statements and taking positions than it is by making laws. Laws may impress, but they are not flexible.

I must say in closing that I have always preferred Plan A to Plan B for one very simple reason. Plan A offers hope. I hope

that we will come back to it. Can we imagine, we who were born and have lived in the 20th century, a century that witnessed many divisions, what it would mean for our country to be divided up? Plan A is based on a common thread. Since the Quebec Act of 1774, our ancestors have fought for our language, our culture and our laws, with a strong majority of us retaining our attachment to Canada.

We are at second reading. I imagine that this bill must be sent to committee for a thorough examination with experts. Never in its history has the Senate had such a fine opportunity to justify and illustrate its existence and its vital role in the Canadian parliamentary system.

[English]

In a few words, I refuse to accept an erosion of our powers. We are criticized from time to time, but we shall keep our powers intact. This may be our finest hour.

[Translation]

**Hon. Roch Bolduc:** Honourable senators, my first reaction when the bill was introduced was to think that if one quarter of an entity decides that it wishes to separate, it is not unreasonable for the other three quarters to indicate their interest in the question. In this sense, it seems to me reasonable that the federal government should express interest in this political question, which has been a recurring issue for 30 years in Canada.

However, is this the right way to go about it? I listened to the speakers during debate at second reading, particularly those from the opposition. Without underestimating what the honourable senators opposite said, I would congratulate Senator Lynch-Staunton on his speech, which covers almost all the reasons for opposing this bill.

I agree with Senator Beaudoin when he says that the legislative approach is probably not the best. If we wished to express the view of the federal government on the question, we would do better to do so by resolution. I will not debate the role of the Senate — that is a constitutional issue. This is something I studied 30 years ago in university, under the guidance of the distinguished Mr. Justice Pigeon.

I would like to give a more practical view. Was the best way for the federal government to clarify this issue to ask the Supreme Court to establish the conditions essential to the validity of the process?

• (1720)

I do not agree with having the federal government make such a request of the Supreme Court, because this results in judges being turned into politicians and mediators, to all intents and purposes. The Supreme Court told the federal government what it should do, that if the question was clear, it would have to negotiate.

The federal government should not involve the Supreme Court in this political problem, which can only be resolved through people talking to one another. The Supreme Court therefore finds itself in the role of mediator and, in this regard, I quote Patrick Monahan:

[English]

True, the Court in the *Secession Reference* may have been acting as politicians rather than as judges in formulating a duty to negotiate secession that applies following a "clear majority on a clear question."

[Translation]

The courts have become somewhat activist — depending on the period — and we have only to take the example of the U.S. Supreme Court, which has had some pretty activist periods in its history. Warren E. Burger, the former Republican governor of California and an Eisenhower appointee to the Supreme Court, became more of an activist than all of the American Left.

I do not wish to pass judgment on our court. I wish to be as diplomatic as possible, but there is a danger of activism hovering over us here. There is a question that arises, and again I quote Patrick Monahan:

[English]

...why any democratic society with properly functioning political institutions would turn over these most fundamental questions to the judiciary for resolution. Courts exist to resolve the legal aspects of disputes, not to opine on purely political matters such as the wording of referendum questions or the majority that should be required before initiating sovereignty negotiations. We expect democratically elected and accountable politicians to resolve such political matters, not unelected judges.

[Translation]

I must admit to my prejudices; I share that view one hundred per cent. I believe — and this is a bit off the topic of the debate, but I am nonetheless going to say what I think — the Charter of Human Rights has become like scripture. Any time there is a problem where the underlying values of society are really being debated, whether this involves abortion, marriage, homosexuality or some other issue, it is no longer the politicians who decide the matter, it is the judges.

There must be something missing in our society for things to be like this. If we cannot reach agreement, let us not talk about it, or let us continue to talk about it until we are fed up, but let us not leave it up to the Supreme Court to decide the most basic of questions.

That is what has happened in the United States. This is shown in Robert H. Bork's *The Tempting of America: The Political Seduction of the Law*. This is a great book, which will show you the real role of the courts. It is a matter for concern in a democracy if the court decides the most fundamental of matters, that is to say those which are the most political, by definition.

[ Senator Bolduc ]

Honourable senators, my feelings on this bill are ambivalent, but having listened to Senator Rivest's speech, my conclusion is that I will not be able to vote in favour of this bill, for it will accomplish nothing. The National Assembly will ask what it wants to ask, there will be a result, and the federal government will decide what it wants to do. I trust that the bill we have here will not be any obstacle to that.

On motion of Senator Carstairs, for Senator Pitfield, debate adjourned.

[English]

## PAYMENTS IN LIEU OF TAXES BILL

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Moore, seconded by the Honourable Senator Kenny, for the second reading of Bill C-10, to amend the Municipal Grants Act.

**Hon. Normand Grimard:** Honourable senators, Bill C-10 makes several changes to the Municipal Grants Act, the legislation that allows the federal government to pay grants rather than property taxes to towns and cities where it owns property. While there are a few problem areas, on the whole this is a good bill.

The changes cover two general areas. First, there is a series of mainly technical changes in the bill's scope and language.

[Translation]

Honourable senators, as someone who has practised law in Quebec for many years, I welcomed the decision to include the expression "real property" where the word "immovables" is used.

Following that change, "federal property" for which payments are made in lieu of taxes will now include an outdoor swimming pool, a golf course improvement, an outdoor theatre, a driveway for a single-family dwelling and improvements made to parking areas for employees.

While these are minor additions, they provide a more accurate reflection of reality. If I must pay property taxes that vary according to the quality of my driveway, why should it not be the case for the government?

Bill C-10 allows the government to make payments to First Nations administrations when a reserve is a taxing authority.

Moreover, the minister may, at his discretion, make additional payments when payments are delayed, and this is something that will please many people. The minister may also authorize payments when the tenants of federal properties are in default regarding the payment of their property taxes.



Honourable senators, under the Canadian Constitution, the federal government does not have to pay property taxes to municipalities. However, it makes payments that help pay for services provided by the municipalities on federal properties.

Bill C-10 even amends the title of the Municipal Grants Act, which will become the Payments in Lieu of Taxes Act.

[English]

One of the technical amendments is a goodwill clause expressing the government's intention to make fair and equitable payments in lieu of taxes. Please note that I say "intention". The government has no obligation to pay property taxes. Perhaps in committee the minister can tell us whether the government has ever considered starting to treat these payments, not as a matter of goodwill — something that it does to be a good property owner, but as an obligation to pay taxes, in much the same way as you, I, or any other property owner in any other city must pay taxes.

[Translation]

Honourable senators, the second part of this bill provides for the establishment of an advisory panel to advise the minister in the event of a dispute over the amount of payment due municipalities.

This is the measure needed to give official stature to the practice of consulting experts. It should be noted, however, that the government is in no way obliged to accept the advice of the panel.

Although it does not happen often, sometimes disagreement can arise on the evaluation of a property. At the moment, there are outstanding disputes in Alberta, Nova Scotia and New Brunswick.

The members of the advisory panel will be paid only when they are performing panel duties. The panel may draw on a fairly large number of members, including at least two from each province and territory.

The chairperson may establish divisions within the panel to perform all or some of the functions of the panel, but Bill C-10 provides no information on the size of these divisions.

[English]

Nothing in the bill compels the minister to accept the panel's advice. Could you imagine any other kind of tribunal where the respondent did not have to accept the tribunal's decision? Under the legislation, as first introduced, the panel members were to be appointed by the minister to serve at pleasure. "At pleasure" means that if you do not please the minister, the minister can get rid of you at any time. Normally, if you want your panel members to be independent, you appoint them to serve during good behaviour.

[Translation]

Consultants whose opinion is sought to clarify technical matters in property assessments should not have to worry about

their professional futures each time they provide an opinion that risks displeasing the minister.

The operations of the advisory panel should bear the imprint of fairness, from the standpoints of both the federal government and the municipalities.

My colleague in caucus who sits in the other House, Gilles Bernier, was concerned that the members were appointed during pleasure. I am happy to learn that the government agreed to Mr. Bernier's amendment that the appointments to the committee be in fact during good behaviour.

In the bill as it was tabled, the appointment of the members and the Chairperson were the responsibility of the minister. Can you imagine a legal system in which the accused freely chose the judge and jury? There would be few convictions!

The government accordingly approved another amendment proposed by Mr. Bernier to the effect that appointments will be made by the Governor in Council rather than the minister.

Nothing compels the government to accept the panel's recommendations, but this advice will at least have the advantage of being provided with complete impartiality.

In addition, the bill does not stipulate any conflict of interest guidelines for panel members. Since it is reasonable to think that many real estate appraisers work for municipalities, some of them might be called upon to settle a dispute involving their municipal employer. It seems logical to me that they be required to state the name of their employer.

Bill C-10 stipulates that members must have "relevant" experience, but fails to define what this entails. This is of no small importance, given that panel members will be earning \$125 an hour, and expenses on top of that, in the performance of their duties. By the way, this is the going rate for professional assessors.

Curiously, membership in the Ordre des évaluateurs agréés du Québec or the Appraisal Institute of Canada is not a prerequisite for appointment to the advisory panel.

I think it unfortunate that this bill includes no provision requiring the government to examine the operation of the panel after a set number of years.

[English]

Honourable senators, these are all matters that we may want to study in committee. However, on balance, this is a good bill and I am pleased to support it at second reading.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

## REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Moore, bill referred to the Standing Senate Committee on National Finance.

[Translation]

# **SCRUTINY OF REGULATIONS**

## **BUDGET REPORT OF JOINT COMMITTEE ADOPTED**

The Senate proceeded to consideration of the second report (A) of the Standing Joint Committee for the Scrutiny of Regulations (2000-01 budget), presented in the Senate on April 7, 2000.—(*Honourable Senator Finestone, P.C.*).

**Hon. Céline Hervieux-Payette** moved the adoption of the report.

Motion agreed to and report adopted.

[English]

• (1740)

# **DISTINGUISHED CANADIANS AND THEIR INVOLVEMENT WITH THE UNITED KINGDOM**

## **INQUIRY—DEBATE CONTINUED**

On the Order:

Resuming debate on the inquiry of the Honourable Senator Cools calling the attention of the Senate:

(a) to persons of Canadian birth who sat as members of the House of Commons of the United Kingdom, including Ontario-born Edward Blake, Liberal Minister of Justice of Canada 1875-1877 also Leader of the Liberal Party of Canada 1880-1887, and New-Brunswick born the Right Honourable Bonar Law, Prime Minister of the United Kingdom 1922-1923, and Ontario-born Sir Bryant Irvine, Deputy Speaker of the House of Commons of the United Kingdom 1976-1982;

(b) to persons of Canadian birth who sat as members of the House of Lords of the United Kingdom, including the Right Honourable Richard B. Bennett, Prime Minister of Canada 1930-1935, and Lord Beaverbrook, Cabinet Minister in the United Kingdom in 1918 and 1940-1942;

(c) to persons of British birth born in the United Kingdom or the Dominions and Colonies who have served in the Senate and the House of Commons of Canada including the Right Honourable John Turner, Prime Minister of Canada 1984 also Liberal Leader of the Opposition 1984-1990 and myself, a sitting black female Senator born in the British West Indies;

(d) to persons of Canadian citizenship who were members of the Privy Council of the United Kingdom including the

Prime Ministers of Canada, the Supreme Court of Canada Chief Justices, and some Cabinet Ministers of Canada including the Leader of the Government in the Senate 1921-1930 and 1935-1942 the Right Honourable Senator Raoul Dandurand appointed to the United Kingdom Privy Council in 1941;

(e) to the 1919 Nickle Resolution, a motion of only the House of Commons of Canada for an address to His Majesty King George V and to Prime Minister R.B. Bennett's 1934 words in the House of Commons characterizing this Resolution, that:

"That was as ineffective in law as it is possible for any group of words to be. It was not only ineffective, but I am sorry to say, it was an affront to the sovereign himself. Every constitutional lawyer, or anyone who has taken the trouble to study this matter realizes that that is what was done.";

(f) to the words of Prime Minister R.B. Bennett in a 1934 letter to J.R. MacNicol, MP that:

"So long as I remain a citizen of the British Empire and a loyal subject of the King, I do not propose to do otherwise than assume the prerogative rights of the Sovereign to recognize the services of his subjects.";

(g) to the many distinguished Canadians who have received honours since 1919 from the King or Queen of Canada including the knighting in 1934 of Sir Lyman Duff, Supreme Court of Canada Chief Justice, and in 1935 of Sir Ernest MacMillan, musician, and in 1986 of Sir Bryant Irvine, parliamentarian, and in 1994 of Sir Neil Shaw, industrialist, and in 1994 of Sir Conrad Swan, advisor to Prime Minister Lester Pearson on the National Flag of Canada;

(h) to the many distinguished Canadians who have received 646 orders and distinctions from foreign non-British non-Canadian sovereigns between 1919 and February 1929;

(i) to the legal and constitutional position of persons of Canadian birth and citizenship, in respect of their ability and disability for their membership in the United Kingdom House of Lords and House of Commons, particularly Canadians domiciled in the United Kingdom holding dual citizenship of Canada and of the United Kingdom;

(j) to the legal and constitutional position of Canadians at home and abroad in respect of entitlement to receive honours and distinctions from their own Sovereign Queen Elizabeth II of Canada, and to the position in respect of their entitlement to receive honours and distinctions from sovereigns other than their own, including from the sovereign of France the honour, the Ordre Royale de la Légion d'Honneur;

(k) to those honours, distinctions, and awards that are non-hereditary in character such as life peerages, knighthood, military and chivalrous orders; and



(I) to the recommendation by the United Kingdom Prime Minister Tony Blair to Her Majesty Queen Elizabeth II for the appointment to the House of Lords as a non-hereditary peer and lord of Mr. Conrad Black a distinguished Canadian, publisher, entrepreneur and also the Honorary Colonel of the Governor General's Foot Guards of Canada.  
—(Honourable Senator LeBreton).

**Hon. Marjory LeBreton:** Honourable senators, I wish to participate in the inquiry set down by my colleague on the other side, Senator Cools, calling to the attention of the Senate the issue of the blockage of the appointment of Conrad Black to the British House of Lords.

We all know the details. The Prime Minister has used several excuses, or more aptly, cast blame in many directions in an effort to explain his actions. Senator Cools and others have laid out all the facts, which undeniably illustrate that there is no basis or precedent to justify the Prime Minister's actions. You know and I know that none of the various explanations and excuses stand up to scrutiny. There is no precedent. There are no laws. There are no regulations. There is nothing to excuse this shameful and embarrassing spectacle. However, this is not about the protocol or lack thereof. What this is about, honourable senators, is the character and the darker side of the Prime Minister and his natural instinct to go for the jugular of anyone whom he perceives to be crossing him.

First, may I say that I do not know Conrad Black, although I have met him on occasion.

Second, I happen to like the *National Post*. This is an opinion not shared by all of my colleagues, I might add. I think it is a good newspaper with a wide range of political opinion expressed by its journalists and columnists.

There is one glaring exception, and that is its editorial page. I do not think it contributes to an enlightened and informed debate when one of its editorial writers, Ezra Levant, a former Reformer and Manning staffer, carries on as the unabashed chief cheerleader for the Canadian Alliance, better known as the party formerly known as Reform. He pops up here, there and everywhere, shilling for his political masters. He and his media hosts refer to him as a columnist for the *National Post*.

If he were a columnist, fair game. We would know where he was coming from and agree with or dismiss his opinions as we wished. Often his editorials are easy to spot by those of us who keep our eye on the political scene, because we hear these views expressed regularly on his various appearances on CBC and CTV Newsnet. Unfortunately, to most Canadians he is not so easily recognized, and a newspaper with the influence of the *Post* should not tolerate the unprofessionalism of his blatant partisan bias. At the very least, they should insist that he sign his editorials. Having Ezra Levant write editorials in the *Post* would be like having me write unsigned editorials for *The Globe and Mail*.

Other than the obvious failings of its editorial page, I think the *National Post* significantly contributes to the discourse in our diverse country.

Third, I do not for one moment believe that Conrad Black, a man of many talents, successes and achievements, not to mention what must be an extremely heavy business schedule, is involved in the direction and management of the *National Post* or his other newspapers. Obviously, however, there is one person who does think so: the Prime Minister.

Honourable senators, this debate is not about some law, rule or regulation. This is about the Prime Minister and his well-known, street-fighter, take-no-prisoners style — his well-known mean streak. This is not hard to see, and most in the public have seen right through it.

I wish to put on the record a letter to the editor from a member of the public:

A newspaper baron who strove to be a knight found it not easy just to be black and white though accepted in Britain as Sir Conrad Black with Jean Chrétien's denial, he was taken aback. With that peerage denied, we know how you feel and advise you to consort with Lady Barbara Amiel and if to call you Sir Conrad is what you want most then beware what you print in the *National Post*.

This was written by Michael Cronin in *The Ottawa Citizen* on June 23, 1999.

So the Prime Minister is angry with the *National Post*. True, they have written some informative, tough pieces, but that is no different from the treatment accorded to all of us. Is that not what newspapers do? Whether it is you or me or Conrad Black is irrelevant. Canadians should be up in arms over a Prime Minister who interferes with an individual's rights just because he does not like what he says.

Let us cut away the bafflegab. This is about one thing and one thing only: Jean Chrétien's desire to get even with Conrad Black. All the evidence is there to prove he went against the advice of his own Privy Council, the Canadian High Commissioner to Great Britain, and the Governor General. According to recently acquired documents, there was an incredible effort by the Privy Council Office to justify the Prime Minister's decision after the fact:

Records previously suppressed from Access to Information reveal considerable debate and confusion within the Privy Council and the Prime Minister's Office as high-ranking bureaucrats scrambled to justify the prime minister's intervention.

The documents were created in late June and in July — a fact that suggests officials scrutinized their internal protocol after, rather than before, the government objected to Mr. Black's appointment on June 10 citing "longstanding government policy."

This, honourable senators, should come as no surprise. There is plenty of proof of the Prime Minister's character traits. I am on the record in this place, and in the public, listing the Prime Minister's many contradictory character flaws, double standards and political hypocrisy. I invite people to read a speech I gave in December, 1996, which sent the Prime Minister's spin doctors and his media apologists into overdrive. If I must say so myself, I was well-ahead of everyone else on warning of the Prime Minister's shortcomings. Today, I will turn to others to substantiate the growing evidence of who John Chrétien really is and what is behind his decision on Conrad Black.

Lysiane Gagnon, writing about the Prime Minister's desire to seek a third term, "Hear the one about the tired old warhorse", in *The Globe and Mail* on March 20 of this year, stated:

At 15, he feigned appendicitis to get out of a college he didn't like and, when caught in his own trap, allowed surgeons to remove a perfectly healthy appendix rather than confess his lie. This tells a lot about the man.

A November 8, 1999, *Globe and Mail* editorial headed, "The fiction of success in Canada's global ranking", quoted the head of the BCNI, Tom D'Aquino, in outlining Canada's eroding position in the global economy. The editorial says, "Chrétien, dare thou speak his name!" and then quotes Mr. D'Aquino:

Those of us who have spoken publicly have already experienced the kind of criticism and veiled attempts at intimidation that blunt talk can generate. There will be more.

To which the editorial responded:

Indeed there will.

Writing about the Prime Minister's tactics in the "Shovelgate" affair, Mr. Lawrence Martin catalogued some telling personal characteristics of the Prime Minister in his *Ottawa Citizen* column, "Life in the trenches suits PM just fine", on February 26, 2000.

As a student, there was the famous episode of Mr. Chrétien faking appendicitis to get extended leave from the boarding school he hated so much. The better part was that he carried the lie right through into the operating room where doctors took out his appendix — even though there was nothing wrong with it.

As a hockey coach, Mr. Chrétien had a star player use a fake birth certificate so he could play on his team and make it a winning team. As a politician, he put in a nice little semi-fix for his re-elections of 1972 and 1974. He arranged for a good friend to win the nomination of an opposing party...

It happened to be our party.

...and then to run a non-campaign against him. Mr. Chrétien's friend recalled sitting in a hotel room the whole campaign.

• (1750)

Mr. Chrétien "had to win," and in the scandal now enveloping the Human Resources department the question is whether he or his people went overboard; whether they shoveled money through a department that was short on a paper trail to friends in right places for votes in right places.

...the PM's essential response strategy on the controversy has been to flatten the opposition. That style — mow them down — has always been his shortcut to success.

Mr. Martin's article continues:

In interviewing him for a biography, the best part was when he talked about his career as a streetfighter.

...There was the time as a young lawyer when he cold-cocked a colleague at a fancy reception in Trois-Rivières, laying him out with such a brutal haymaker that women were screaming as the blood streamed across the hardwood floor. There was the time at college when he sucker-punched a student who had biceps twice his size and left him slumped and groaning against the gymnasium wall.

Mr. Chrétien may have mellowed somewhat since then. But when, a few years ago in Hull, he grabbed a professional protester by the throat and put the famous Shawinigan choke hold on him, you knew he hadn't changed.

In *The Globe and Mail* of October 24, 1998, under the headline "What makes Chrétien rage?" William Thorsell wrote:

Why is Jean Chrétien so angry? Why does the Prime Minister react so aggressively and cruelly to the most straightforward of human situations?

It shows in almost everything the Prime Minister does — his nervous, bullish bravado in the face of almost everything complex or unpredictable that crosses his path. He governs from the personal insecurity that dares not ask for help or show magnanimity lest one iota of a densely fortified position be put at risk.

Are any members of the Liberal caucus under any illusion about their prospects if they show the slightest public difference of opinion with Mr. Chrétien on a matter of policy? How many Liberal backbenchers have lost their committee assignments for voting against a controversial government bill that in no way constituted a matter of confidence? How many Liberal backbenchers have voted for a government bill, sometimes with tears in their eyes which they opposed in their hearts and minds, knowing that the slightest divergence from Mr. Chrétien's line would quash their careers?



How many strong Canadian federalists in Quebec were shunned and rejected during the 1995 referendum campaign, told their help was neither wanted nor needed, simply because they were members of an opposing political party in our democratic system?

It becomes a make-believe world in which Mr. Chrétien imagines conversations with homeless men, and then reports them to the public as real. It becomes a vendetta world in which Mr. Chrétien evinces stark indifference to the agony of a former prime minister and his family, unjustly caught in the horror of a botched police investigation. It becomes a paranoid world in which the cardboard signs of students standing for the rule of law and freedom of speech against the universally acknowledged transgressions of foreign leaders turns into dangerous weapons.

It is difficult to any person to realize that the Peter Principle applies to himself, and that most everyone around him knows it, too.

...The bluster is a symptom, not a cause. Jean Chrétien is an angry man in the Prime Minister's chair. There is nothing we can do about his anger.

James Travers, writing in the *Toronto Star* on March 9, 2000, gives us an insider's view on the internal struggles in the Liberal Party, when he states:

...this Prime Minister is more comfortable bullying than being bullied and such an obvious effort to make him go will only convince him to stay.

What did others say on the subject at hand, namely, Mr. Black's peerage? Lawrence Martin of *The Ottawa Citizen* stated on June 22, 1999:

Despite Chrétien's protestations to the contrary, only the very naive would conclude that his blocking of Black's path to the House of Lords has nothing to do with his desire to retaliate against the *National Post*.

My sense is that the peerage case is Chrétien's way of telling the newspaper magnate: "Call off your dogs, or you'll be hearing from ours."

An article in the *Ottawa Sun* on June 26, 1999, by Paul Stanway, states:

Chrétien and his lackeys have advanced several reasons for not approving Black's elevation to the peerage. None of which seem to hold much water.

As owner of one of Britain's largest national newspapers, the *Daily Telegraph*, Black was certainly in line for a title. It goes with the territory.

Personally, I'm not a big fan of titles (probably because I'm never going to get one), but what's so terrible about the Queen of Canada honouring a Canadian for his accomplishments in Britain?

Nevertheless, it seems incredibly petty for the Prime Minister to block the honour for such transparently personal reasons. I'm presuming that Chrétien will eventually have to approve the peerage for Black, but his own reputation will have suffered as a result of this silliness.

An article found in *The Globe and Mail* on June 27, 1999, under the headline "Honour Conrad, Shame on Jean," by Lysiane Gagnon, states:

So Mr. Black was on his way to the House of Lords when Prime Minister Jean Chrétien stepped in.

Although he was initially told by Canadian government officials that his peerage would be no problem as long as he obtained British citizenship, Mr. Chrétien suddenly decided that such a nomination was impossible.

...since Canada allows dual citizenship, and since citizenship carries obligations but also access to various privileges, there is no reason to deny Mr. Black's peerage — no reason except cheap partisanship and an increasing intolerance to criticism within the Prime Minister's Office. This was crudely exemplified last year when Mr. Chrétien's press secretary, Peter Donolo, filed a complaint against CBC reporter Terry Milewski, whose aggressive investigative reporting on the APEC affair cast a bad light on the Prime Minister.

It seems that Mr. Chrétien doesn't like the coverage he gets in Mr. Black's *National Post*, and he certainly doesn't like Mr. Black's opinions. So what we see is yet another mean-spirited attempt at humiliating a political adversary. This is not a scandal comparable to the Airbus affair, in which the Chrétien government tried to destroy former prime minister Brian Mulroney's reputation on the grounds of totally unproved allegations. It is just plain pettiness, unworthy of a prime minister.

Honourable senators, in an article in *The Globe and Mail* on June 29, 1999, under the heading, "Jean Chrétien and the blocking of Conrad Black," Gordon Gibson writes:

The instructive part relates to the politics of envy and the continuing discovery of the real Jean Chrétien.

...When Canadians succeed well beyond the average in ordinary fields such as business and the professions they become the object of many people's envy.... The federal Liberals understand the politics of this....

... I would have described him —

— and here Mr. Gibson is referring to Mr. Chrétien —

— more as a cunning person of average intelligence and excellent bonhomie...modified by a closeted ruthlessness and a long memory for enemies. Mr. Black having made himself an enemy, the rest follows.

...My final adjective for the blocking of the peerage is "outrageous". Mr. Black would have made a great contribution to the House of Lords.

I also have an article found in *The Ottawa Citizen* on August 10, 1999, under the heading, "Time to overturn Nickle Resolution," by David Warren. Pointing out he was no fan of Conrad Black and debunking the use of the Nickle Resolution to deny the honour to Mr. Black, Mr. Warren had these things to say about Mr. Chrétien:

Jean Chrétien's behaviour is part of a pattern long established. There was the day he laid his hands upon the neck of that protester in Hull, who got within the prime minister's physical reach, when he should have taken his chances with the bodyguards. What a temper it revealed!

More to the point was the use of the RCMP to pursue Brian Mulroney on trumped-up corruption charges. The calculation was that Mr. Mulroney had left office too unpopular to defend himself, and the Liberals would have a field day leaking allegations to the press from an investigation that might go on forever.

In both these cases, the supposed hapless victims bit back through the courts; so that in the end, Mr. Chrétien probably wished he hadn't opted for a bit of fun.

...Mr. Chrétien's —

**The Hon. the Speaker:** Honourable Senator LeBreton, I regret to have to inform you that your 15-minute period for speaking has expired.

**Senator LeBreton:** May I have leave, please?

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Hon. Sharon Carstairs (Acting Deputy Leader of the Government):** Honourable senators, while Senator LeBreton is still on her feet, I wish to point out that there is general agreement not to see the clock at six o'clock.

**The Hon. the Speaker:** Honourable senators, is it agreed not to see the clock at six o'clock?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Please continue, Senator LeBreton.

**Senator LeBreton:** Mr. Warren goes on to state:

...Mr. Chrétien's invocation of the Nickle Resolution was so obviously bogus. Not only was the elevation of a British-resident dual-national not contemplated in its wording, but even if it has been, it had no effect. The British can, Canadian resolutions notwithstanding, do anything in Britain that they please. They are only prevented by courtesy.

And it was by playing, informally, with this power of courtesy that Mr. Chrétien was abusing his power....

An article appeared in the *Halifax Daily News*, March 8, 2000, under the headline, "PM deserves the boot: Black's peerage fiasco exposed Chrétien's flaws," by Harry Flemming. Mr. Flemming begins with the quote:

"Upon what meat doth this our Caesar feed, 'That he is grown so great?'" — Cassius, in Shakespeare's *Julius Caesar*.

The little guy from Shawinigan has grown too big for his britches.

Forget for the moment, if you can, the fact three of 10 RCMP investigations into questionable "job-creating" grants are in Chrétien's constituency of Saint-Maurice. Forget all the other things, including his dubious financial dealings. Forget poor Conrad, too, but zero in on the Black affair and assess the character of the man who has been at or near the centre of our national political life for 37 years.

• (1800)

The "little guy"...has become Napoleonic: self possessed self-important, cocksure, dictatorial, intolerant history-obsessed, vindictive, mean-spirited, and overripe for a fall.

Using a spurious precedent, Chrétien intervened with the British government to deny Black a life peerage. As owned of London's *Daily Telegraph*, it would have been unprecedented if he hadn't been offered a peerage... Why the intrusion into the affairs of another country? Sheeple, that's why. Black's Canadian flagship, the *National Post*, has been doing some intrusive reporting into the financial affairs of Chrétien and some of his pals.

To make bad worse, Chrétien and his lackeys not only ignored, but suppressed, advice from their senior protocol adviser that Black was indeed eligible to accept appointment to the House of Lords.



His street-fighter image from his Shawinigan boyhood stood him well. His earthy ways made him a man of all the people, in contrast to the aristocratic Trudeau. The guy who "couldn't speak either official language" was us.

That was then. Now, he's a thug.

Honourable senators, there are many more similar writings in many of our newspapers, but time does not allow me to read all of them into the record.

In closing, I should like to speak of the most popular game in town — the "blame game," which is played to a high level of expertise by the Prime Minister and his government. There is never, ever, an admission of wrongdoing, never an apology, not even a simple, "I'm sorry"; and there is no ministerial accountability.

The Prime Minister can go skiing via government helicopter, build an expensive private road to his private estate at the taxpayers' expense, throttle a protester and blame the RCMP. He can miss the funeral of King Hussein, blame the Jordanians, the staff, and then settle on the Chief of the Defence Staff for blame. He can perform poorly at a townhall meeting and blame the Montreal waitress for calling him to account for his GST promise. There can be cabinet leaks and the billion-dollar boondoggle, and he blames the bureaucracy. He can nearly lose the country and blame the Quebec Liberal Party.

When they have run out of people to blame, Brian Mulroney always comes in handy, although Mr. Chrétien conveniently fails to blame him for free trade, tax reform, international leadership, and all of the other policies of Mr. Mulroney's government that are now contributing to our healthy economy.

Now that the difficulties and failings of his government have come to light, Mr. Chrétien can blame it on the *National Post* and, by extension, Conrad Black.

Mr. Black is in good company on the board of the Prime Minister's "blame game." The Queen is one. Conrad Black's life peerage was deferred in order to spare the Queen the constitutional "embarrassment" of having to choose between conflicting advice from two heads of government, sources within the U.K. government say. This was reported in the *National Post* on June 22, 1999.

The British Prime Minister, Tony Blair, received the same reasons as the Queen for being spared.

You guessed it, honourable senators — we might as well trot out Brian Mulroney again, and I quote from an interview on March 19, 2000, when Don Newman of CBC asked:

Do you think that's what this lawsuit is all about, publicity for Conrad Black's newspapers, or do you think that he really wants to be in the House of Lords?"

The Prime Minister replied:

There was a Cabinet committee who looked into that, and they said that the regulation put forward by Mulroney were the good ones, and we did not change that. And so he could not accept it and remain a Canadian citizen. That's all."

I think this is the first time the Prime Minister has used the word "good" in the same sentence as "Mr. Mulroney." I say to the Prime Minister: Nice try, but what you said is totally false. There was no regulation passed by the Mulroney government, and you know it!

Honourable senators, it is as clear as glass. This is a contemptuous act based on nothing but false vanity. We are now left to accept that it is the Prime Minister's prerogative and nothing can be done — how sad.

Professor Lorne Sossin of Osgoode Hall and York University wrote an article in *The Globe and Mail* on March 23, 2000, after Mr. Justice Lesage's ruling. The ruling stated:

It is well recognized in our jurisprudence that advice by a political leader in relation to foreign affairs comes within the political area of the prerogative that is not subject to review in the courts.

In layman's language, it means the Prime Minister is above the law. Professor Sossin writes:

Where no Charter right is at issue, as in Mr. Black's case, the old common law rule of royal prerogatives being outside the scope of judicial review still applies. While courts will rule on whether the prerogative exists, they will not examine how or why such power is exercised. This means that ordinary citizens (even citizens with Mr. Black's extraordinary resources) cannot hold the Prime Minister accountable for civil wrongs that may have been committed against them in the exercise of a royal prerogative. Can it really be that, in the year 2000, an elected official in this country can act with impunity?

He continues:

It is the role of the court to ensure the exercise of public authority is lawful. If the Prime Minister had determined that the Queen should not confer a peerage on Mr. Black, and communicated this position in good faith to the British government, then no cause of action should arise, notwithstanding Mr. Black's hurt pride. However, if the PM formed and communicated a position on this issue out of personal animus for Mr. Black, then this is no longer a legitimate political decision, but rather a personal attack and an abuse of power. The rule of law dictates that no public official enjoys absolute discretion, not the Prime Minister and not even the Queen.

...To shield such accountability in the name of the royal prerogative is offensive to Canada's democratic character.

Honourable senators, this whole episode is an embarrassment for Canada and should cause Canadians to reflect on the actions of the Prime Minister. It is sad to say, but this is yet another example of the use of one of the Prime Minister's weapons of choice — the sucker punch — for that is what he did to Conrad Black and in so doing has damaged Canada's reputation in the world. So much for honesty and integrity, because in this case he demonstrated neither.

**Hon. Nicholas W. Taylor:** Honourable senators, would the Honourable Senator LeBreton permit me a small question?

**Senator LeBreton:** Absolutely.

**Senator Taylor:** In view of the fact the honourable senator seems to be quite familiar with Lord Black — or almost Lord Black — can she confirm the story that is circulating that

because *Frank* magazine refers to him derogatorily as "Lord Tubby," Conrad Black will buy that small magazine to still its voice?

**Hon. Anne C. Cools:** Honourable senators, I should like to move the adjournment of the debate.

**Senator Carstairs:** Honourable senators, Senator Cools has spoken already to this inquiry. It is my understanding that an honourable senator cannot speak twice to the same inquiry.

**The Hon. the Speaker:** It is the inquiry of Senator Cools, and she has the right to close the debate on it.

On motion of Senator Cools, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.



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OFFICIAL REPORT  
(HANSARD)

**Tuesday, April 11, 2000**

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Tuesday, April 11, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### APOLOGY TO THE HONOURABLE RON GHITTER

##### STATEMENT IN RESPONSE

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, as my statement, I should like to read part of a statement by our former colleague the Honourable Ron Ghitter, regarding the apology that he received from Mr. Ezra Levant and Mr. Rob Anders, which states as follows:

...I have now received a complete and unequivocal apology from Mr. Levant and Mr. Anders...

In addition to the apology which will be published this week in *The Calgary Herald*, *The Calgary Sun* and *The Edmonton Journal*, the settlement also includes the full payment of all my legal costs and a substantial contribution to the Tom Baker Cancer Clinic and the Sheldon Chumir Foundation which will be made in equal sums.

The issue is not so much the attack on my integrity, which I found to be very hurtful, as much as it is the growing direction of politics in Canada where personal attacks are becoming more and more common. The issues involved are the very basic concerns of leadership, dignity and the fundamental responsibilities of those involved in public life to maintain an element of decorum, fairness and above all civility in their conduct.

To be clear, those of us in public life have an obligation to aggressively debate the issues, to question the policies of others, to engage in the cut and thrust of political dialogue and to advance our agendas and arguments in the most persuasive manner. However, to enter into unsavoury and mean-spirited tactics of character assassination, based on alleged facts that are false, and out of context interpretations, as a means to encourage campaign contributions is not only unacceptable, it is deplorable.

If such tactics are left unchallenged there will be a continuing growth of disrespect for our institutions and the dedicated men and women who chose to serve in them. The result will be that fewer and fewer talented Canadians will agree to serve in our Parliaments, our Legislatures and our City councils.

In this case the ultimate responsibility lies with Preston Manning.

Mr. Anders is a Reform M.P. and Mr. Levant was a close advisor to Preston Manning at the time he wrote and distributed the letter. They acted with Mr. Manning's authority, and the blessing of the Reform Party.

Mr. Manning had the following to say when I threatened a law suit.

There is nothing in the letter that is libelous, Ghitter has no grounds to sue.

With the things in that letter being on the streets of Alberta every day, what's Ron going to do, sue all the rest of Alberta? I mean he's an unaccounted, unelected Senator for whom Albertans have less and less respect.

This is the same Mr. Manning who previously is quoted as saying,

We will campaign on principles and specifics and avoid the simple bashing of opponents and the manipulation of symbols. I want to emphasize that we in the Reform Party are not interested in personal attacks on individuals or in bashing any group or region in Canada.

Mr. Ghitter ends his statement by saying:

I think it would be appropriate, and it is to be hoped that Mr. Manning would also publicly apologize for his support and encouragement of such deplorable conduct and defamatory statements by one of his M.P.s and a senior advisor in his office.

**Hon. Senators:** Hear, hear!

#### WORLD CURLING CHAMPIONSHIPS WORLD JUNIOR CURLING CHAMPIONSHIP

##### CONGRATULATIONS TO WINNING TEAMS

**Hon. Gerry St. Germain:** Honourable senators, I rise today to pay tribute to 15 superb Canadians who hail from the great province of British Columbia. Canada and British Columbia are proud to congratulate these three world champion teams.

This past weekend, we saw the World Curling Championship Tournament held in Glasgow, Scotland. On Sunday, April 9, 2000, Canada's entry into the men's challenge was led by Greg McAulay's Royal City Curling Club from New Westminster. The foursome was comprised of Greg McAulay, skip; Brent Pierce, third; Bryan Miki, second; Jody Sveistrup, lead; and Darin Fenton, fifth. McAulay's team captured the men's world curling title with a smashing win over Sweden after nine ends. This was Canada's twenty-sixth senior men's title since competition began in 1959.

The men's victory completed a gold medal sweep for Canada after Kelley Law of Richmond, B.C., claimed the women's title Saturday with a thrilling 7-6 victory over Switzerland. The women's team, representing the Richmond Winter Curling Club, was comprised of Kelley Law, skip; Julie Skinner, third; Georgina Wheatcroft, second; Diane Nelson, lead; and Cheryl Noble, fifth.

Law clinched the global crown with the final rock of the tenth end and earned Canada its eleventh world women's curling crown. McAulay became the third B.C. skip to win a world title this year.

The first skip to win a world title this year was Brad Kuhn, of Vernon, B.C., who won the world junior men's title on March 26, 2000, at the Grindel Arena in Geising, Germany. The young men who led and represented Canada in the World Junior Curling Championship were coached by Jock Tyre. The team was comprised of Brad Kuhn, skip; Kevin Folk, third; Ryan Kuhn, second; Hugh Bennett, lead; and Jeff Richard, fifth. Team British Columbia was from the Kelowna Curling Club.

For the tenth time since the competition began in 1975, and for the third year in a row, Canada struck gold at the men's World Junior Curling Championship.

• (1410)

It cannot get much better than this. Greg McAulay's victory marks the ninth time Canada has won both the men's and women's senior titles in the same year. No other country has ever accomplished this feat.

Honourable senators, British Columbians roared out of the hack, cleaned the house in Scotland, swept themselves to victory and slid out with the crowns, back to the great province of British Columbia.

**Hon. Senators:** Hear, hear!

## FORUM ON SOCIETY AND THE ECONOMY

**Hon. Douglas Roche:** Honourable senators, a remarkable event took place yesterday on Parliament Hill. The Forum on Society and the Economy, the highlight of a two-year consultation initiated by the United Church of Canada, led by its moderator, the Reverend Bill Phipps, brought a faith perspective to issues of responsible economic and social policy. The purpose of the forum was to address the fundamental principles and values of social justice that should underlie economic and political decision-making at the individual, community and national levels.

Some of the values cited were mutuality, community, human dignity and solidarity, and inclusion. Contrast these values with the voices of the poor who were heard yesterday. The poor are growing in number, sinking ever lower in spite of a rapidly expanding economy, and are experiencing feelings of being blamed and excluded. In seeking the common good, the forum's participants stressed the desire to take their rightful place in

setting the national agenda and holding their governments accountable.

This is a timely message coinciding, as it does, with the United Nations Secretary-General's Millennium Report entitled "We the Peoples," which calls for civil society to draw strength from acting together within common institutions based on shared rules and values to free the world's peoples from want and fear. In an era of globalization, people feel threatened by events both close and far away. They are also more aware of injustice and exclusion and expect states to take meaningful action.

Yesterday's message was loud and clear: People who seek change are abandoning political parties and processes. In fact, our colleague Senator Murray told the gathering that political institutions in Canada have eroded to the point of "irrelevancy". We must be concerned that active citizens are moving away from Canada's political process.

Honourable senators, as I listened to this group of religious and community leaders, one telling word reappeared throughout the day — hope. The forum's expressed disaffection with government has not marred its appetite for action and new ideas, even if it is only a crack in the wall. The group that made up yesterday's forum will not be silent. They want change.

## VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I draw to your attention a visitor in our gallery. Mr. Cliff McIsaac was a member of the Saskatchewan legislature for some years. He was also a cabinet minister there at the same time as our colleague Honourable Senator Wiebe and, later, a member of the other place here in Ottawa.

Welcome to the Senate.

**Hon. Senators:** Hear, hear!

[Translation]

## QUESTION PERIOD

### FOREIGN AFFAIRS

PALESTINE-ISRAEL PEACE NEGOTIATIONS—  
STATEMENT BY PRIME MINISTER

**Hon. Jean-Claude Rivest:** Honourable senators, the Right Honourable Prime Minister of Canada is having a bad spring, this year. After all the tumult of the Liberal Party of Canada convention, now he has headed off to the Near East where he has committed several blunders. This very morning, he spoke out in contradiction to the established Government of Canada policy on the ownership of the shores of Lake Tiberias thus managing to upset Syria today, Israel yesterday, and Palestine the day before that.



Honourable senators, the Prime Minister, who claims to be a man of clarity, has managed to create confusion with his statement about a possible unilateral declaration of independence by the Palestinians. Such a declaration has political resonance on the Quebec situation — although the comparison is a tenuous one — given the debate that is going on here concerning the unilateral declaration of independence.

We are well aware that the situation in Quebec is not the same as in Palestine. What explanation could Canada give internationally, were it faced with such a situation, for having a different attitude toward Quebec than the Prime Minister has stated in connection with Palestine?

[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the Honourable Senator Rivest for that question. I had suspected that he did not attend the recent Liberal biennial meeting, and his description of it confirms the fact that he was not there.

I must correct the honourable senator when he describes it as a difficult meeting. I was there with many of my colleagues. It was a wonderful and terrific meeting. It was extremely successful, and very much appreciated by the Prime Minister for the unreserved support he received.

On that point, I must indicate to the honourable senator a small correction with respect to the substance of the issue he raised. I agree with him that the situation in Palestine is fundamentally different from the situation in Quebec. He has indicated that and I support that judgment. We are committed as a country to encourage both the Israeli and the Palestinian authorities to continue their negotiations to arrive at a successful conclusion.

The international community stands firmly on that position and we want to do everything we can to support it. From time to time, there are discouraging aspects to those negotiations, but we must remain optimistic and encourage the parties to continue working toward an overall peace agreement to allow for both those peoples to live in harmony, one with the other.

• (1420)

I do not know whether it is useful or helpful in that context to speculate heavily on that hypothetical situations. I will refrain from doing that to any extent, with some concern that we do not wish to say anything here that would harm the progress of the negotiations.

**Hon. John Lynch-Staunton (Leader of the Opposition):** It is one. You do not want to repeat it, is what you are saying. Once is bad enough.

**Hon. A. Raynell Andreychuk:** Honourable senators, if it is the case that we do not want to say anything, why did the Prime Minister say something?

**Senator Lynch-Staunton:** He believes in clarity.

**Senator Boudreau:** Honourable senators, I think the Prime Minister was expressing his personal feelings with respect to the future of the Palestinian people in their homeland. That is a position we probably all support.

As to precisely why the Prime Minister made a particular statement at a particular time, I trust there will be people who will ask him that question when he returns.

**Senator Andreychuk:** Honourable senators, the Leader of the Government in the Senate is saying that the people of Canada would support the statement made by the Prime Minister. My understanding, from a foreign policy point of view, is that the Canadian people support the peace process and that this was the government's position until the Prime Minister intervened. Are we still on the original foreign policy? If this is foreign policy by the day, by the hour, or by adhocery, then that will be devastating in the Middle East and also in Canada.

**Senator Boudreau:** I believe the honourable senator is quite correct. The position of our country is to encourage the peace process. That remains our position. Under the circumstances, we can only work to encourage that process and hope for its success.

**Senator Andreychuk:** Therefore, it was Canada's position to support the parties actually negotiating and involved in the peace process, to not do anything to disrupt the peace process, to not get involved in the peace process, and to not make statements about anything that had to do with the content of the peace process. Why did the Prime Minister, therefore, in that context, make that statement? He was there, not as a private citizen, but as the Prime Minister of Canada.

**Senator Boudreau:** Honourable senators, our position as a country has not changed. I believe our Prime Minister has not in any way interfered with the peace process. In fact, he continues to state that Canada actively encourages them to continue the peace process, and we firmly and fervently wish for its success.

**Senator Andreychuk:** Honourable senators, I take that to mean that the Prime Minister made a mistake.

**Senator Boudreau:** I do not wish to speculate on what might happen in other circumstances if, in fact, the peace process is not successful, or depending on some of the outcomes. I will not speculate on that since it is not helpful to the peace process itself. I can only reassure the honourable senator that Canada's position today is unchanged from what it was yesterday or last month. We continue to hope for the successful conclusion of that peace process.

**Senator Andreychuk:** The answer of the Leader of the Government in the Senate leads me to believe that there continues to be the same problem that has existed in the government for some time. In other words, there is a foreign policy as enunciated by the Minister of Foreign Affairs and then there are the actions of the Prime Minister. When will those two come together in a coherent foreign policy?

**Senator Boudreau:** Honourable senators, the Prime Minister's position is identical to the position of Canada and the Foreign Affairs Minister; that is, that we encourage the peace process without reservation, we hope for its successful conclusion, and we will do anything we can to assist with that process. That is the policy of Canada at the moment, and I am confident in saying that that is the position of the Prime Minister.

**Hon. Lowell Murray:** Honourable senators, on the basis of the Prime Minister's statement, is it the position of the government that Canada would recognize a unilateral declaration of independence by the Palestinian Authority? Yes or no?

**Senator Boudreau:** Honourable senators, as I said in answer to an earlier question, it is not particularly helpful to speculate on hypothetical situations. We have a particular set of circumstances before us now. The parties are engaged in this process, and it is one in which we sincerely wish to be successful.

ISRAEL—DEPLOYMENT OF NEUTRON ANTI-TANK MINES—  
POSSIBILITY OF REPRESENTATIONS BY  
PRIME MINISTER DURING VISIT

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I have a question relating to the Prime Minister's visit to the Middle East.

**Senator Kinsella:** Bring him home.

**Senator Lynch-Staunton:** Today, I understand he was visiting our troops in the Golan Heights. Canada has been there now for 25 years — at last count with 189 peacekeepers. I hope that the Prime Minister was made aware of a most disturbing story in *The London Times* on March 26, which reports that Israel has a plan called "David's Sling," which is to deploy neutron anti-tank mines near the Golan Heights where Canada's peacekeepers stand watch. Was the Prime Minister made aware of this story, which comes from an authoritative newspaper? If so, has the Prime Minister addressed the issue with Israel during his discussions over there?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I must indicate to my honourable friend that I cannot respond to that question. I do not know whether the Prime Minister was made aware of that particular story or whether he was aware of that situation in advance of the story, if, in fact, that situation is correct. I can only give the honourable senator a very incomplete answer at this stage, but I will direct his question to the Prime Minister's Office. No doubt, he will give it his attention upon his return.

**Senator Lynch-Staunton:** Honourable senators, I think the Prime Minister will have many other things to attend to upon his return. I was hoping the Leader of Government in the Senate could find the answer and give it to us as soon as possible. Hopefully, the story will be false.

As we know, Israel has never denied or admitted that it is a nuclear power. Israel certainly has nuclear weapons. First, should Canadian peacekeepers be there to sit on land where there may

be nuclear anti-tank mines buried; and, second, are these nuclear anti-tank mines covered by the anti-personnel land mine treaty that Canada promoted so heavily?

**Senator Boudreau:** Honourable senators, I can appreciate Senator Lynch-Staunton's wish to have the information as quickly as possible. Perhaps I can direct the question to the Minister of Foreign Affairs in the absence of the Prime Minister and include specifically those issues the honourable senator raises.

I must comment and repeat what is an obvious fact; that is, that our peacekeepers have put themselves in harm's way in many areas in the world and have served remarkably under those circumstances. However, I can appreciate that the honourable senator raises an issue that he suggests might take this circumstance out of the ordinary. I will attempt to obtain that information for him as quickly as possible.

[Translation]

## SOLICITOR GENERAL

### AUDITOR GENERAL'S REPORT ON ROYAL CANADIAN MOUNTED POLICE SCREENING PROCESS OF FORENSIC SERVICES AND DNA TESTING

**Hon. Pierre Claude Nolin:** Honourable senators, this morning the Auditor General of Canada tabled a report. Chapter 7 of this report concerns the Royal Canadian Mounted Police and the services available to those responsible for enforcing the law.

Honourable senators will recall that we examined Bill C-3 year and a half ago. We passed this bill after lengthy examination of it by the Standing Senate Committee on Legal and Constitutional Affairs.

The bill provided for the creation of a system for collecting DNA samples and the establishment of a DNA data bank. When the bill was being examined, we heard from witnesses, including some from the RCMP, who spoke at length of their plans to set up laboratories in Canada that would analyse this DNA.

The Auditor General's report presents quite a different reality from that offered by the authorities from the RCMP. I am not talking only of the minister, but also of the experts who came to testify before our committee and who convinced us of the need for this measure. We are still convinced of it. Now there is a problem of time.

• (1430)

Witnesses from the RCMP appeared before our committee and told us that 30 days were required to do DNA analyses. This morning, we learn that, in the Ottawa laboratory, it takes 100 days and, in the Vancouver laboratory, 171 days. A murder investigation last year cost \$1.3 million, because the RCMP took so long to present its report. I am sure that the minister's assistants have already informed him of the various aspects of the Auditor General's report. What are we to do about it?



[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have had a brief opportunity to view the Auditor General's comments as the document was just tabled today. The honourable senator will appreciate that I have not had an opportunity to read it in any great detail but I have had a briefing on it, specifically in the area of his concerns.

Honourable senators should understand that the Auditor General was focusing on certain services delivered nationally by the RCMP, not on policing issues. The honourable senator referred to the laboratory and forensic service offered across the country by the RCMP, and specifically to DNA testing, which involves a two-stage screening process, the initial stage and the final work-up.

If my numbers are correct — and I qualify my answer by saying this is from memory of a very limited review — the Auditor General found that for completion of the DNA testing, the initial screening took up to 83 days and the final screening took up to 183 days.

I sought more recent information and I will get the answers specifically for the honourable senator. However, it is my understanding that those circumstances have changed dramatically since the Auditor General did his investigation. Currently, the preliminary screening, which had taken 83 days, now takes, I believe, five days. The final screening, which had taken 183 days, now takes 30 days. Therefore, the concerns have been quite dramatically addressed.

I am giving this information from memory. I ask the senators' indulgence if any of the numbers are not accurately presented.

**Senator Nolin:** When the Leader of the Government talks to his colleague the Solicitor General, the Honourable Lawrence MacAulay, later this afternoon, would he tell him the following: Bill C-3, the DNA identification bill, was considered a year and a half ago. Bill C-10, which amended the Criminal Code with regard to DNA identification, was considered a few months ago. The same witnesses appeared in front of the committee on both bills. The Auditor General ended his inquiry in September 1999. We heard those witnesses in January of this year. They maintained the 30-day period, knowing that in reality it was six months. We need reassurance that what was said in front of the committee is the truth. The system will be fully operational in June of this year when the bill comes into effect.

How does the minister reconcile six months with one month? The same witnesses who appeared before us a year and a half ago appeared before us two months ago. Who is lying?

**Senator Boudreau:** The most current information I have from the Solicitor General with respect to DNA testing is that all cases are now assigned a priority. The initial screening is completed in an average of five days, compared to an average of 82 days at the time of the Auditor General's findings. All priority-one cases, for example, a murder case would be a priority-one case, will be

completed within 30 days, compared to an average of 183 days at the time of the Auditor General's findings.

The honourable senator indicated that witnesses who appeared before the committee had indicated that, in their view, up to that point, the old numbers were still the accurate numbers. I will certainly speak to the Solicitor General, but the most current information I have has been provided to this chamber. That would seem to contradict the proposition that substantial progress has been made in addressing these problems.

**Senator Nolin:** Honourable senators, we were never informed of a delay of half a year. The witnesses always indicated that it was 30 days. What the minister received from Mr. MacAulay is what we have — two months ago it was a year and a half and 30 days. When they appeared before the Senate committee, were they telling us what they wanted to achieve or what the reality is?

We are talking about the possibility of freedom for certain individuals, and we understood the importance of following procedure. An individual can be linked to a crime, so it is very serious. The witnesses never talked to us about half a year. Is it a problem of resources or securing the technology? We were never told. They also maintained, "We even receive foreign visitors who observe our system in order to copy it."

We have a problem, which is why I am asking these questions. Is it half a year? The Solicitor General is indicating 30 days. That is exactly the information we were given when ministers, officials, and experts from the RCMP appeared before the committee.

**Senator Boudreau:** Honourable senators, I will forward the issue as a concern raised by the honourable senator. While the current information I relayed to the Senate today is the identical information a Senate committee received some time ago, at least one senator has a tinge of scepticism and wants confirmation that the numbers I have given are the numbers being achieved today.

I will undertake to frame that question in the terms I have described, relay it to the minister, and bring back a response.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government)** Honourable senators, I should like leave to make a comment at this point on house business.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Kinsella:** He does not need leave.

**Senator Hays:** With or without leave, I should like to comment on house business.

• (1440)

Honourable senators, pursuant to the rules, and in the interest of orderly process in this place, I confirm that Senator Kinsella, the Deputy Leader of the Opposition, and I have been in discussion on how to dispose of the first order of business on our Order Paper; namely, Bill C-9, to give effect to the Nisga'a Final Agreement.

We have agreed, on behalf of the government and the official opposition, that all votes on the bill or amendments thereto will be taken at 3:30 in the afternoon on Thursday of this week.

I thank my counterpart for his cooperation in reaching this agreement. It is very much appreciated.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I confirm what the Deputy Leader of the Government in the Senate has just said. I wish to advise that, pursuant to rule 38:

At any time when the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate may state from his or her place in the Senate, that there is an agreement among the representatives of the parties in the Senate...

That is the agreement to which Senator Hays has alluded and to which we are party.

**The Hon. the Speaker:** Honourable senator, I believe that pursuant to the rules there should be a motion to that effect. The difficulty in which I find myself is that there are independent senators who may not be in accord with this agreement reached between the two parties.

**Senator Hays:** Honourable senators, as I have indicated, this is not a house order but rather an agreement between the government side and the opposition side. I appreciate that that does not include independent senators.

Reference has been made to rule 38. I would be happy to move a motion to that effect once I have the text. With leave, I shall move such a motion later today.

**The Hon. the Speaker:** Is there leave, honourable senators, for such a motion to be moved later this day?

**Some Hon. Senators:** Agreed.

**Senator Kinsella:** Honourable senators, rule 38 is discretionary. It says that the Deputy Leader may propose a motion. In the alternative, as we have reached an agreement and are so advising the house, it would be a house order.

**Hon. Anne C. Cools:** No, absolutely not. Honourable senators, I am very pleased that the deputy leaders have arrived

at an agreement, and that they are being sensitive and inclusive in informing us of such. However, that agreement must move from a private agreement between the two of them into a formal order of this chamber that is binding upon all of us.

A motion is necessary and Senator Hays has the full support of all here to move such a motion later this day.

**Hon. Edward M. Lawson:** Honourable senators, the two sides have again made a deal with no regard for the independent senators, as if they are non-persons here. This kind of deal is like wife swapping with a bachelor. What is in it for the independents?

**Senator Hays:** Honourable senators, I am sensitive to the point raised by Senator Lawson. I would have liked to have discussed this matter with independent senators, had there been time. However, as the agreement was reached only a few minutes before the sitting today, there was no time to do so. That is the principal reason independent senators were not informed of the discussion and the conclusion thereto.

**The Hon. the Speaker:** Is it agreed, honourable senators, that we will revert later this day for the purpose of a motion?

**Hon. Senators:** Agreed.

## NISGA'A FINAL AGREEMENT BILL

### THIRD READING—MOTION IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement,

And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence,

**Hon. Ione J. Christensen:** Honourable senators, before begin my remarks on Bill C-9, I should like to comment on Senator Lawson's remark that the agreement reached between the Deputy Leader of the Government and the Deputy Leader of the Opposition is like wife swapping. That is a very sexist comment. I do not believe that members of my gender would find that a desirable thing to do.

**Senator Taylor:** How about "spouse swapping"?

**Senator Christensen:** We would not be interested in that either.



Honourable senators, I wish to add my voice to the debate on Bill C-9, the bill to give effect to the Nisga'a Final Agreement. It has been demonstrated by many of my honourable colleagues that this is a complicated, contentious, and some would argue, divisive bill. I have listened to the intricacies of constitutional arguments, both in this place and at the committee hearings. Learned persons with many years of experience in teaching and applying constitutional matters have given us conflicting arguments. Asking for yet another constitutional opinion through a ruling from the Supreme Court, as suggested, would not, in my view, be appropriate at this time. It may very well be a course of action taken in the future, but that should only happen after this bill is put into force and if, through application, it is proven that a legal finding is required.

There have been a number of treaties signed which have far greater impact on both lands and the political scene than the Nisga'a agreement. Each is different, and each future claim will be different, depending on the existing circumstances and on what is required for self-sufficiency of a particular band.

The Yukon Umbrella Final Agreement was different. That agreement provided a framework for 14 Yukon bands to negotiate and ratify their own treaties to meet their own needs. All of these treaties in the Yukon include the right to set criteria for citizenship under the enrolment commission. All these bands are recognized as a new level of government in the Yukon, with the right to participate in the development of all of the Yukon through boards, committees, and government-to-government negotiations.

In meeting Canada's fiduciary obligations to First Nations, two avenues can be followed: negotiation or litigation. Negotiation is by far the most favourable option. Through litigation, the courts must follow the law, and it has been clearly demonstrated through numerous cases cited in this place and throughout the hearings in committee that aboriginal rights to lands, resources, culture, and language are recognized.

The elected governments of all parties negotiate to reach settlements that fairly represent all parties, while at the same time allowing First Nations to take control of their own destiny by controlling the resources that will support their development. Litigation imposes illegally binding solutions with no ability for public or political input. Such litigation is far more costly, both fiscally and socially, than the negotiated option.

• (14:50)

We hear many argue that the costs, at both the negotiation stage and on the implementation of such treaties, are too high for the taxpayer to bear. The cost of litigation or a continuance under the Indian Act would be equally as high, if not higher. To continue under the Indian Act would mean an open-ended flow of funding with no ability for First Nations to become self-sufficient, nor to share in contributing as taxpayers. Through negotiated settlements, First Nations could achieve both and take their place with pride of self-worth.

There are those who feel that a referendum is a requirement before ratifying such a treaty. I strongly disagree. One cannot use a referendum when one is dealing with minority rights. It is not democratic. The Nisga'a agreement is subject to the Charter of Rights and Freedoms in all respects, thereby protecting the rights of all persons covered by that agreement, as pointed out so eloquently by Senator Chalifoux in her address regarding First Nation women's and property rights.

Of all the issues, the one that has given us the most concern is the matter of unresolved land overlaps between adjoining First Nations. This is not a new problem in land claim negotiations. In James Bay, Nunavut, the Northwest Territories and the Yukon land claims, overlaps were, and continue to be, a problem with all parties. They are dealing with that issue in their own ways. In talking with some of the Yukon First Nation leaders, they say that this matter is one which they, and only they, can settle between themselves and that third parties, such as the territorial, provincial or federal governments, should not be a part of it.

Honourable senators, this is a difficult issue. Lines on maps are not the traditional way by which boundaries were delineated. The traditional way was to define boundaries by the different uses during different times of the year, and the shared use of the land. Individual ownership was a foreign concept. By using European laws, First Nations are trying to prove historic use and to fit that into a clearly defined map. It is problematic.

The Nisga'a agreement states that changes can be made, and where they are made, the Nisga'a will be compensated. Other bands that are also negotiating could have similar provisions. Their rights would be recognized where they can prove ownership. If they lose some of these rights, then they, too, would be compensated, if that were part of the provisions of the negotiated agreements with governments.

We cannot, here in this chamber, renegotiate that issue. However, we can make, and are making, recommendations regarding the handling of overlaps in future claims. Delaying this treaty would not solve the overlap issue. It is only after this bill is passed that further negotiation and, if necessary and only as a final resort, litigation can take place.

Have we got it right, honourable senators? How will history judge Bill C-9? Fifty years from now, will it have stood the test of time? By looking back over the past 100 years, we know that the paternalistic approach towards the First Nations under the Indian Act did not work. Yet, at that time, given those social norms, what was done seemed to be the right way to go. It was not done maliciously. It was full of good intentions. One could even ask that if it had not been done, if the interests of First Nations had not been addressed, however wrongly, where would the First Nations be today?

Through modern treaties, such as the Nisga'a Final Agreement, rights and responsibilities are being recognized for First Nations in order that they may be masters of their own destiny. Will it be a resounding success? Not necessarily. Will it be a better approach than that taken in the past? Most definitely.

Can we create a perfect piece of legislation by delaying and amending Bill C-9? I would suggest not. With its imperfections, which are inherent in any negotiated agreement, I am willing to support Bill C-9, knowing that it is an evolving process and that changes could be made.

Honourable senators, we are working to help Canadians define their future. Canadians who have not had that opportunity in the past. We must show our trust in their ability to manage their affairs. We are not creating new communities or new people through this piece of legislation. These people have been here all along and have been receiving funding to support their communities and their people. New funding will not necessarily be needed. It will be merely a reallocation of funding that has been ongoing and would have been ongoing. Resources are not being taken away. They are still there to develop and to enrich our land.

Bill C-9 and similar treaties are offering the opportunity for First Nation Canadians to be full and equal partners in Canada for the first time.

Honourable senators, I wish to bring to your attention a matter that has recently — in fact, yesterday — arisen. It concerns Bill C-9.

Some honourable senators may be aware that a court action was recently started by four members of one Nisga'a community to prevent Bill C-9 from being passed. These plaintiffs charged improprieties of process during the ratification of the Nisga'a treaty in the public process held in the fall of 1998, during which over 60 per cent of the Nisga'a people voted approval of that treaty. What is significant is that the British Columbia Supreme Court, on April 5 of 1999, dismissed an application for an interim injunction to prevent Canada and British Columbia from passing Bill C-9. Yesterday, on April 10, 2000, the B.C. Court of Appeal also refused to grant an interim injunction, and it dismissed the appeal.

I am told that the B.C. Supreme Court has repeated its earlier view that the courts should be reluctant to interfere with the legislative process. As the court has previously said, the entire legislative record, which would include the debates of this chamber, is relevant to the constitutional challenge to the Nisga'a treaty.

Honourable senators, we should carry out our responsibilities to complete our legislative function in this case. The plaintiffs would then have the opportunity to proceed with their court challenge in the future.

**Hon. Gerry St. Germain:** Honourable senators, I should like to ask several questions of Senator Christensen, if I may. I listened carefully and wish to compliment her on her speech.

The honourable senator noted that a negotiation is the most favourable way to proceed and that litigation is too costly. Senator Christensen was in committee with us and did an excellent job. She heard the presentations made by the Gitanyow and the Gitksan when they stated that they would be forced into

this costly litigation. When the minister was asked if he would commit funds for that litigation, he would make no commitment. Where will these poor people get the money for litigation?

Further, the minister never said that he would not enter into immediate, serious negotiations. However, he also never said that he would, from what I recollect.

The honourable senator has been exposed to a considerable number of these types of negotiations and agreements in the Yukon. Does she not find it offensive that the negotiators would have granted five fee simple sites in 85 per cent of the land that is disputed by the Gitanyow as being theirs?

I concur with the remainder of my honourable friend's speech. The Nisga'a should have an agreement and they deserve an agreement. We must move forward with these things. However, I and several people with whom I have spoken consider this overlap situation to be a total affront.

Actually, there are six fee simple sites. One is in the area disputed by the Gitksan and the five others are in the disputed area of the Gitanyow. All are in the management area, not on the core lands. Does the honourable senator not find it offensive that the negotiators would grant these fee simple sites and rub them into the face of the Gitanyow?

**Senator Christensen:** Honourable senators, I was not at the negotiating table. I do not know what was negotiated, what was given away, and what proof was provided for those fee simple sites. Therefore, I cannot comment on whether it was fair.

However, as I have stated, the overlap issues have given us concern. It is my view that the Nisga'a Final Agreement has provided leeway for the possibility of making necessary changes to the boundaries in the Nisga'a agreement through sections 33, 34 and 35.

• (1500)

**Senator St. Germain:** Honourable senators, I agree with that. We have heard that their only recourse is through litigation, which was the subject matter of my first question. I know that there are supposed to be remedies within these sections. The Gitanyow and the Gitksan, however, find no comfort in this. They will be forced into costly litigation; yet, they will not be funded to carry it out. How will they accomplish this? This is a case of negotiators treading on and beating down the minority rights of a small group of aboriginal people.

**Senator Christensen:** Honourable senators, it is my feeling that under sections 33, 34 and 35 the door on negotiations is still open. I met with the Gitanyow, who felt that that was the case. They also felt that it should be reinforced in some way so that it is clear to the Nisga'a.

Certainly, the Nisga'a have negotiated very successfully with two other bands on their borders. From what I have heard, I feel there is a very good possibility that they can still negotiate. Litigation is always the final step. However, I think other avenues are still open to them.



**The Hon. the Speaker *pro tempore*:** Honourable senators, Senator Christensen's 15 minutes has expired.

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to ask a question of the Honourable Senator Christensen.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators, to extend the speaking time of the Honourable Senator Christensen?

**Hon. Senators:** Agreed.

**Senator Andreychuk:** The honourable senator quite rightly said that the British Columbia court has said that they will not intervene to make any decisions until this legislation has been passed. I think, perhaps, one of the reasons for doing that was so that they would not be seen to be taking sides, because the applications are being brought by "interested parties."

Does the honourable senator not agree that there is a very fundamental issue here, which was brought to us by the lawyers, namely, the issue of governance within our Constitution? Does the honourable senator not agree, therefore, that a reference to the Supreme Court of Canada is a different issue from the one in the British Columbia courts?

**Senator Christensen:** Honourable senators, I thank the honourable senator for her question. The honourable senator's question is certainly one that I anticipated being asked. Unfortunately, I have lost my notes on that particular question. My ability in my advanced age to retain a lot of this information is not as good as it once was. I am not a legal-minded person.

I am satisfied that under section 35 of the Constitution there is not a constitutional issue here. In Yukon, authority was delegated as opposed to its being entrenched, as it will be with the Nisga'a. Going the delegated route gives a paternal effect. It leaves it wide open. We have been doing this through the Indian Act for years. Entrenchment, as has been implied with the Nisga'a agreement, gives that certainty which is the ability for the Nisga'a to do it. There are provisions to make changes, if it is proven necessary. That, however, does not concern me.

**Hon. John Buchanan:** Honourable senators, I will not get involved in the discussion of the substance of the agreement or the bill. I am fundamentally opposed to this bill for one specific reason, that reason being that this bill is not constitutionally organized. It is a bad bill as far as the Constitution is concerned.

Any bill going through the House of Commons, the Senate or any legislature in this country — and this includes the Nisga'a bill — must be set up under the existing Constitution, which, as all of us know, is the foundation on which our country was built. I refer to the Constitution as amended in 1982 and 1983. If the agreement, and now this bill, does not conform to the Constitution, then it should not go through the Senate. It is as simple as that. It should be fixed before it is passed by the Senate. It should have been fixed before it passed the House of Commons.

This bill purports to make some of the powers of a province concurrent with the powers of this third level of government,

self-government. The only way that that can happen is if the Constitution of Canada were amended to allow the transfer of powers under sections 91 and 92 to a third level of government. That did not happen. There was no such constitutional conference at which that occurred.

It is my opinion that we not only respect but we must abide by the Constitution of Canada in whatever we do in this place. If we do not do that, then we are inviting anarchy into our system.

I am not saying that the agreement, or the "deal", as it has been called by many, is a bad deal or a good deal. I am not commenting at all on its substance.

Honourable senators, why would we in the Senate pass a bill that we know is not constitutionally valid and that will be challenged in the courts, where, some honourable senators say, it will probably be successful? We certainly are not serving the aboriginal peoples involved in this agreement, nor the people of British Columbia and of Canada, by passing something that is not constitutional, just for the sake of hurriedly passing it. For whatever reason, the government wants to do it. Later on, if it is challenged — and we know it will be — it might be successful.

Is this a constitutional bill? In order to answer that question, honourable senators, we must look back to the conferences at which the Constitution was amended. In other words, we have to look back to the late 1970s and the early 1980s. In 1982, was an intention expressed to amend the Constitution of Canada to set up a third level of government, that is, an intention to set up self-government for aboriginals? Honourable senators will look at that and say, "In 1982, were sections 91 and 92 changed to allow the setting up of a third level of government — that is, self-government?" After 1982 and 1983, the Constitution of Canada was intact. It is still intact today, just as it was back in 1982 and 1983. The premiers of the day and Prime Minister Trudeau did not change the Constitution of Canada to allow for the setting up of a third level of government or self-government for aboriginals.

• (1510)

The 1982 constitutional accord did not in any way set up such a self-government or third level of government. Neither did the conferences of 1977, 1978, 1980, 1981, 1982 or 1983 do any such thing.

If, as some are saying, a third level of government was permitted by the accord of 1982, why is it, then, that at that same conference and in subsequent conferences the premiers of the day and the prime ministers of the day set up conferences in the future to discuss that very item, self-government for aboriginals? Why would that be done if it had already been achieved in 1982? These conferences were set up to discuss that very thing — that is, whether we would have self-government for aboriginals in this country, a third level of government.

If, as some say, it had been done in 1982, why would we waste our time in determining whether we would or would not do so in the future?

There are some who say that, in Canada, there is already a third level of government in all the provinces: it is called municipal government. We as legislators know that that is not true. Municipal government is not a third level of government under the Constitution of Canada. It never was. Municipal governments are simply creatures of the provincial legislatures. We set them up, and we can tear them down. We can change them, we can amend them, and we can destroy them. As the Leader of the Government in the Senate knows, we did that in Nova Scotia on many occasions. We amended municipal acts to change what they had been delegated, not transferred. These were delegated authorities that were taken away from them.

There is no such thing in Canada, in 1982 or in 1999 or in the year 2000, as a third level of government. In order for there to be a third level of government, you would have to be able to point to some document in which it was agreed to and where it was finalized in constitutional form. It was not done in 1982. Was it done after 1982? The only way it could have been achieved after 1982 was by agreement of the provinces and the federal government, ratified by every provincial legislature — or maybe by seven, under the 7-50 rule. That did not occur. It did not occur in any of the legislatures of Canada, nor did it occur in the House of Commons. There are honourable senators here who were in the House of Commons through the 1980s and 1990s. They will know it did not occur. There was no such resolution, through all of the 1980s or the 1990s. Certainly, there was no such resolution in the provincial legislatures.

Where, then, do we get the idea that we in the Senate can pass a bill that is unconstitutional? We cannot do it. There was never any such agreement in any of the federal-provincial conferences that were chaired by Prime Minister Trudeau, by Prime Minister Clark, by Prime Minister Trudeau again, or by Prime Minister Mulroney. Never did it happen. Therefore, we are abdicating totally our responsibilities as legislators if we pass something that we know is not constitutional.

Was it ever discussed, honourable senators? Yes, it certainly was discussed. From the late 1970s through the 1980s, at aboriginal conferences that were set up by provincial governments and by the prime ministers of the day to discuss such things as self-government, it was discussed — but that is all. There was never any agreement to set it up. I challenge you to point to any document that set up a third level of government. It did not occur at any time.

You may ask how I know this. I was there. I just heard the Leader of the Government in the Senate say he was at a meeting where something happened. I did not get his train of thought, but I heard him say, "I was there." I am telling you, I was there, at every one of those conferences, from 1977 right up to the Meech Lake Accord of 1990. I checked with some of the premiers who were there. I checked my notes, which are archived in Nova Scotia, but I kept copies. I checked newspaper accounts. I said, "Buchanan, are you a little bit fuzzy in the head? They are telling you that that level of government was set up in 1982." Yet, I was there. There was no such thing done. It did not happen.

I can recall the premiers who were at the conferences: Bill Bennett, Peter Lougheed, Sterling Lyon, Bill Davis,

Grant Devine. I spoke to Grant Devine the other day, and asked him, "Do you remember when we set up the third level of government, self-government?" He said, "We never did." I said, "That is good, Grant. You were there." It never happened. Premier Hatfield? I could not call him unfortunately. I know what he would say, though. Premier Peckford? Premiers Lee or MacLean? Both were there, Premier MacLean at the first and then Premier Lee at the other. I never missed one, from 1977 right through 1990.

I see members of this house who were sitting behind the prime minister back in the early 1980s. Do you know another gentleman who was sitting in back of the prime minister of the day? The present Prime Minister, Jean Chrétien. He was there. Is he saying that his prime minister of the day, Prime Minister Trudeau, agreed to set up self-government for aboriginals, a third level of government, and then turned around and decided, "Well, look, gentlemen, let us set up future conferences to discuss self-government"? Why would we do that? The reason? Because we had never set it up in the first place.

Honourable senators, constitutional lawyers will agree that, when a court is interpreting statutes, if there is any concern on the court's part, the court goes back and looks at the intention of the legislators in passing the legislation. A court looking at this bill, if it is passed and challenged, which it will be, will take a look at what was discussed by 10 premiers and a prime minister. I can guarantee that you will not find any intention on the part of any of those premiers, nor the prime minister, to set up a third level of government in 1982 or 1983, nor in subsequent conferences. I can guarantee that because I was there. You can check with any of the premiers you want and they will tell you the same thing.

I simply say, let us be very sensible here. I do not want to get involved in the substance, as I have said. It may be a great deal but let us not start passing legislation through this Senate just for the sake of getting it through, ignoring the fact that we are doing something that is not constitutional.

Therefore, I urge honourable senators not to pass the bill until we have had the opportunity to make it constitutionally pure.

**Hon. Lowell Murray:** Would Senator Buchanan entertain a question?

**Senator Buchanan:** Certainly.

**Senator Murray:** He will recall the three first ministers conferences that were mandated by the 1982 Constitution. The first one was presided over by Prime Minister Trudeau in 1982. I think it is no oversimplification, although the honourable senator can correct me, to say that what Prime Minister Trudeau proposed at that meeting was delegated authority. The final two conferences were presided over by Prime Minister Mulroney. I took the position that the federal government was willing to go beyond delegated authority. Powers would be negotiated which would be attributed to aboriginal governments by way of constitutional amendment.



• (1520)

At the second of three conferences, my friend also attended and they came very close to reaching agreement but did not.

I was involved in the third conference, in the negotiation with the provinces and the aboriginal organizations. There, again, we got to the first ministers' level and it failed, not only because we could not get enough provinces on board for a constitutional amendment, but also because there was some division, as there had been in the second conference, among the four aboriginal organizations themselves. My friend will recall that.

The point is that there was no question about what we were discussing. We were talking about a constitutional amendment to define and identify the rights referenced in section 35.

In the Charlottetown accord, the federal government took another step, which has been referred to in this debate. This was a recognition of the inherent right of the aboriginal peoples to self-government. Even there, as I recall the provisions of the Charlottetown accord — and again I do not have it in front of me — the provinces, the federal government and the aboriginals were to meet to work out the powers, and if they failed to do so, the issue would be turned over to the Supreme Court of Canada to define it for them. I think that was the nub of the Charlottetown Agreement, as I recall it.

All that being said, I do have a question for the honourable senator. As I said the other night, Senator Austin, Senator Joyal and I were all there the night section 35 was agreed to at the joint Senate-House of Commons committee. What does he make of section 35(3), where it says:

For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

The same phrase is found, as my honourable friend knows, in section 25 of the Charter where it refers to the guarantee. It says that aboriginal rights and freedoms are not affected by the Charter in the sense that the Charter cannot abrogate them. That includes the Royal Proclamation of 1763 and "any rights or freedoms that now exist by way of land claims agreements or may be so acquired."

I am not sure whether the proponents of this bill are resting their case on the phrase "or may be so acquired" and are claiming that the self-government provisions in the land claims agreement or treaty, as it is, are covered by section 35. What does my friend make of that?

**The Hon. the Speaker:** Before I entertain any further questions, the time for Honourable Senator Buchanan's speech has expired. Is leave granted for the honourable senator to continue?

**Hon. Senators:** Agreed.

**Senator Buchanan:** First, what the Honourable Senator Murray has said about the conferences after 1982 is absolutely right. As I said in my comments, we had already agreed to set up further constitutional conferences on aboriginal self-government. We agreed to do that after 1982.

Why would we ever agree after 1982 and 1983 to set up conferences? Senator Beaudoin was there as an expert. Why would we agree to set them up if we had already set up a third level of government? It is inconceivable. It never happened because we had never set it up. Again, section 35 reads:

For greater certainty, in subsection (1) "treaty rights" includes rights that now exist by way of land claims agreements or may be so acquired.

It says land claims which "may be so acquired" and nothing else. Anyone reading that can realize it has nothing to do with self-government nor the setting up of a third level of government. If it did, why did we later on have further conferences to discuss the very thing that some claim had been set up? It just did not happen.

If we were to call each of the premiers involved through all the 1980s and the three prime ministers who were involved, they would tell us the same thing. There was never any intention nor was there any amendment to the Constitution of Canada to set up self-government for aboriginals.

I am not saying I am opposed to self-government. There were premiers who were opposed to it, as Senator Murray said. That is why we failed, in two conferences, to do what some people say we did. That is impossible. How could we have failed to do something that we had already achieved? The answer is it had never been achieved.

It is interesting that if you were present and if you have notes and if your memory is not gone completely, then there is no question. I am telling honourable senators that we did not set up a third level of government nor self-government in 1978, 1980, 1981, 1982, 1983, 1985, 1986, 1987 nor 1990.

**Senator Chalifoux:** What about in 1995?

**Senator Buchanan:** Nor in 1995. If my honourable friend can show me where we did it, I will apologize to her.

**Senator Chalifoux:** It is right here.

**Senator Buchanan:** Is that right? Read it to me because I was there in 1995.

**The Hon. the Speaker:** Honourable senators —

**Senator Buchanan:** If she has the proof, I should like to see it.

**Senator Taylor:** Sit down and we will read it to you.

**Senator St. Germain:** Table it.

**The Hon. the Speaker:** Does that complete the speech by Honourable Senator Buchanan and further questioning?

**Senator St. Germain:** She wants to table something.

**The Hon. the Speaker:** Honourable senators, Senator Chalifoux has already spoken on this matter, but she can ask a question.

**Senator Lynch-Staunton:** She can comment. Make a comment.

**Hon. Thelma J. Chalifoux:** Honourable senators, I should like to ask a question.

**Senator DeWare:** Make a comment.

**The Hon. the Speaker:** Honourable senators, it is quite proper to have the last person answer a question, but it is not proper for the last speaker to ask anyone else in the chamber a question. Otherwise, there will be no order in our discussions.

**Senator Chalifoux:** Honourable senators, is the Honourable Senator Buchanan aware that as a result of Canada's 1995 inherent rights policy, self-government arrangements may be negotiated simultaneously with land and resource issues in a comprehensive claims agreement? Negotiations under the British Columbia Treaty Commission process are an example of comprehensive claims negotiations that include a self-government component.

**Senator St. Germain:** That is a Liberal policy.

**Senator Buchanan:** I can find all kinds of statements made over the years. What the honourable senators has just read to me is not a constitutional amendment of the Constitution of Canada in 1995. If that had occurred, it would have had to be ratified by seven Canadian provinces and their legislatures, representing 50 per cent of the population of Canada, as well as the House of Commons and the Senate. I challenge the honourable senator to show me that, because I was in the legislature all that time and we did not pass any such amendment.

• (1530)

**Senator Chalifoux:** Honourable senators, I, too, was there. I was on the other side. I was on the aboriginal side. I am not referring to a constitutional amendment; I am referring to a Government of Canada policy that was established in 1995. Are you aware of that policy?

**Senator Lynch-Staunton:** Does that come from the Red Book?

**Senator Buchanan:** I am aware of many policies of governments of Canada that were just that.

**Senator Chalifoux:** Yes or no?

**Senator Buchanan:** P-O-L-I-C-Y, policy; it does not mean a thing.

**Senator Tkachuk:** It means about the same as the free trade policy, or the GST.

**Hon. Jack Austin:** I listened with great care to what Senator Buchanan had to say, but I find it impossible to know what constitutional amendments he is speaking to. There is no constitutional amendment in Bill C-9. There is a provision that operates entirely within the Constitution and laws of Canada. That provision brings Bill C-9 under the protection of section 35, which is a part of the Constitution of Canada. There is no change to the Constitution of Canada in this legislation.

**Senator Lynch-Staunton:** No one said there was.

**Senator Buchanan:** I know there is not. That is the problem. How can you amend a constitution unless you go through the —

**Senator Austin:** No.

**Senator Buchanan:** That is what you just said. The fact of the matter is that there has never been an amendment to the Constitution of Canada to allow a third level of government in this country — unless it happened in the last five, seven or eight years. I do not think it did. Did it, Senator Beaudoin?

**Senator Beaudoin:** No.

**Senator Buchanan:** No. All through the 1970s and 1980s it never occurred. I challenge you to call all the premiers and ask them if they amended the Constitution to allow for a third level of government. They did not. The only way to have a third level of government in this country is by way of amendment, and you are saying section 35 did it?

**Senator Austin:** No. I am saying that in Bill C-9 there are no amendments to the Constitution, none at all.

**Senator Buchanan:** What Bill C-9 is doing is giving concurrency and paramouncy to another level of government in this country. If you want to change the wording to "the agreement is delegating to the Nisga'a," I will agree. "Delegating" something means that you can take it back at any time you want. If that is what you want to do, I will certainly agree, because many amendments to our municipal acts delegate authority, but then we can take it back. If that is what you want to do, then I believe there will be no disagreement here. Senator Beaudoin says yes; if he says yes, he is correct.

**Senator Austin:** Honourable senators, I should like to ask Senator Buchanan whether he is aware of the Supreme Court of Canada decisions in the *Sparrow* case and the *Delgamuukw* case? In these cases, the Supreme Court of Canada is saying that constitutionally protected aboriginal rights under section 35 are not absolute, that they can be infringed upon, provided the Government of Canada or Province of British Columbia justify that infringement. There is no change to the Constitution of Canada.



**Senator Buchanan:** I have never heard of a constitutional amendment that is agreed to by one province and the Government of Canada. It just does not happen.

**An Hon. Senator:** It does so. Section 25. That is how.

**Senator Rompkey:** That is how we changed the Newfoundland education system. You can.

**Senator Buchanan:** Oh, Term 17.

**Senator Lynch-Staunton:** It is not bilateral.

**Senator Buchanan:** That is right, this is not bilateral.

Are you saying that, if Bill C-9 passes, any government in this country can then set up a third level of government in its province?

**Senator Beaudoin:** Paramountcy.

**Senator Buchanan:** Paramountcy, that is right. Are you saying that? If you are, you are wrong.

**Senator Robertson:** That is what they are saying.

**Senator Christensen:** Honourable senators, I have a question for Senator Buchanan.

The honourable senator certainly made it clear that he does not condone or accept a third level of government. What would the honourable senator call the level of government of the First Nations in the Yukon and the two territories, who have their treaties negotiated and who are actually accepted as a third level of government in those territories?

**Senator Buchanan:** No, they are not third levels of government. They are delegated federal authorities. That is all they are.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, to Senator Buchanan, who was there and was consulted with —

**Senator Taylor:** That was when he was the olive bearer.

**Senator Buchanan:** Were you there?

**Senator Kinsella:** Senator Buchanan has told us that he was here, that he has consulted with a number of other first ministers who were there. He could not consult with our former colleague Richard Hatfield — God rest his soul — but I was an adviser to Richard Hatfield and I was there.

**Senator Buchanan:** Yes, you were. That is right.

**Senator Nolin:** Everyone was there.

**Senator Tkachuk:** We were all there.

**Senator Graham:** Too bad we were not all there.

**Senator Kinsella:** When self-government was being addressed, is it not true that most of the premiers, if not all, and the prime minister of the day did hold serious discussion and focused on the model of municipal government? That was the model that they were studying.

**Senator Buchanan:** I am pleased that you intervened, because you were there. That is right. I was there, too. It is interesting to note that that is exactly the model that we had been discussing.

Honourable Senator Kinsella also may recall that many of the aboriginal chiefs who were present were not very certain as to what kind of self-government they wanted to have set up. It is interesting that they were not sure of what they wanted to set up. We certainly, as premiers, were not. Why, then, do you say that we did it? It just was not done.

However, that is exactly right. We had these conferences. I have some great pictures of smoking a peace pipe with many of the aboriginal chiefs. We had very good meetings. Senator Beaudoin was there as a consultant. Many of the participants smoked a peace pipe.

**Senator Lawson:** But he didn't inhale!

**Senator St. Germain:** What kind of tobacco did you have?

**Senator Andreychuk:** Honourable senators, I must have been the only one who was not there at the time, and I should like to note it for the record. I would like to footnote that it was because of my age, but I guess that is not possible.

**An Hon. Senator:** That is a low blow.

**Senator Andreychuk:** I should like to ask Senator Buchanan what I hope is the most germane question to the issue before us.

As I understand the government's position, they are resting their case on legal opinions given to them, that the legislators, the honourable senator included, in 1982 contemplated the kind of structures that we have in the Nisga'a treaty, which is a First Nation dealing with the Canadian government, and that we would not be able to intrude on the exclusive powers of this First Nation unless the test of justification could be met. The test of justification would be some extreme emergency. Was that ever discussed in 1982?

**Senator Buchanan:** I do not recall that being discussed because I cannot recall that we ever discussed, at any of these conferences, the transfer of powers or the transfer of concurrent powers, or any such thing. We did discuss, as Senator Kinsella said, the possibility of setting up a self-government along the lines of municipal governments throughout this country, which does not mean transferring of powers or giving concurrent powers that cannot be taken back. It was simply a delegation of powers that can be taken back at any time by the legislatures. That is what we had been discussing.

There is no doubt also that there were some premiers — who shall remain nameless — who were opposed to any kind of self-government, who were also in agreement with perhaps setting up some municipal style. There were some aboriginal chiefs who were not opposed but who were uncertain as to the kind of self-government.

• (1540)

If that occurred through the 1980s, then why would you say that it had been achieved in 1982 when, as Senator Murray said, there were three or four conferences after 1982? Most of the meetings were held in public, although some were *in camera*. I shall not divulge what we did in the *in camera* meetings. However, the result of those meetings is that there was no self-government set up nor a third level of government, in neither the *in camera* meetings nor the public meetings.

**Hon. Gerald J. Comeau:** Back in the 1970s, Senator Buchanan was the fisheries minister for Nova Scotia. Therefore, I would assume that as premier of the day he would have brought his fisheries expertise to the discussions on self-government.

Does the honourable senator recall on any occasion whether he would have agreed, or potentially agreed, to paramouncy over fisheries by a third level of government?

**Senator Buchanan:** I will correct one thing that Senator Comeau said. Senator Andreychuk talked about age. I was first elected in 1967 but I was only 15 years old at the time. I was actually Minister of Fisheries in 1968, 1969 and part of 1970. The answer to the question is no.

On motion of Senator Andreychuk, debate adjourned.

## **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. William M. Kelly:** Honourable senators, I have listened carefully to the debate thus far on Bill C-20 and have been impressed by many of the points made. I was particularly interested in the case made by my colleague Senator Rivest. I must admit that my position on the bill has shifted somewhat upon hearing some of the arguments presented in the chamber over the past several weeks.

The way I see it, Bill C-20 cannot be considered on its own. Bill C-20 is a part of a series of past events and part of a wider strategy relating to the threat of Quebec separation. On its own, therefore, the bill may appear to be unnecessary or ill-advised, among other things. When we consider it in a wider context, I remain convinced that Bill C-20 makes sense in principle.

I am reminded in this regard of the words of Charles Dickens, attributed to Ebenezer Scrooge in *A Christmas Carol*:

Men's courses will foreshadow certain ends, to which, if persevered in, they must lead. But if the courses be departed from, the ends will change.

I believe that this bill became inevitable as a consequence of the referendum result in 1995, the government's decision to refer the question of the legality of unilateral secession by Quebec to the Supreme Court, the Supreme Court's decisions on that reference, and the government's announced Plan A and Plan B strategy.

Like Ebenezer Scrooge, we may wish to undo or rewrite unfortunate decisions or actions in the past, but we cannot. We cannot change the referendum result in 1995. We cannot change the decision to make a reference to the Supreme Court, nor can we change the questions posed in the reference. We cannot change the Supreme Court's decision. We cannot change the Block Québécois commitment to separation. Because of that, in my view, Bill C-20 becomes necessary.

The essence of the Supreme Court's decision was that Quebec could not unilaterally secede, but the Supreme Court went further and specified the conditions under which the federal government and other constitutional actors in Canada would have to negotiate secession in Quebec. Those conditions were "a clear majority vote on a clear question in favour of secession." The Supreme Court did not, however, opine on what constituted a majority vote or a clear question, leaving that to the constitutional actors of the day to decide.

The bill then became necessary for two reasons. First, the bill clarifies what the supporters of separation have attempted to obscure. The separatists have emphasized only part of the Supreme Court's decision, namely, that the federal government would be obliged to negotiate secession in response to a successful referendum. They try to ignore the other part, namely that the obligation arises only in response to a clear vote and clear question.

Second, the bill establishes that the rule of law prevails, rather than a political decision at the time, in deciding what constitutes a clear majority vote and a clear question. I believe it is wise to establish such a procedure during calm and relatively tranquil times, rather than trying to devise a procedure in an atmosphere of panic and high emotion that would inevitably result following a referendum outcome purporting to support separation.

In the debate thus far, there are three issues relating to this bill that I have found troubling. The first issue is the lack of a role for the Senate of Canada equivalent to the other place and consistent with the Senate's constitutional role.



Honourable senators, I must say that I do not consider this issue terribly serious because it is unrealistic to believe that reasonable people at committee would not amend that section of the bill. It does not make any reasonable sense when we are talking about the future of Canada.

The second issue pertains to the lack of definition in the bill as to what constitutes a clear majority. I am impressed in this regard by the case made by Senator Lynch-Staunton. On the other hand, I am also taken with the argument that it is impossible to define in advance an immutable threshold. We cannot possibly foresee all of the circumstances that would legitimately affect any threshold that may come into play at the time of a referendum.

The third issue pertains to the point made by Senator Rivest that this bill will entrench what one might call a "dialogue of the deaf" between Quebec and Ottawa pertaining to future referenda.

As I understood Senator Rivest's point, the PQ in Quebec would only hold a referendum on sovereignty association, and Ottawa would only recognize a referendum on an unambiguous question of secession. My understanding of this bill and of the Supreme Court's decision is that this bill does not foreclose referenda in Quebec on questions other than secession. All this bill establishes is a role for the Government of Canada should Quebec wish to pose or interpret a referendum question as a mandate for secession. My understanding, therefore, is that there may well be referenda in Quebec — and, for that matter, in other provinces — pertaining to constitutional change short of secession in which the federal government may participate, and the results of which it may recognize at its option. I trust this matter will be examined carefully in the committee.

In anticipation, honourable senators, of these issues being examined with care in committee, I support this bill in principle. My preference, of course, to return to the words of Ebenezer Scrooge, would be for the government to alter its course in terms of its stand on constitutional reform so that "the ends will change" and Bill C-20 will no longer be necessary.

Honourable senators, it is clear to me, and it must be to all of us, that this bill will pass at second reading. I was taught to recognize the rule by numbers in this chamber. It is not a rule I have liked much, but I have been reminded of it often enough to know that this bill will pass second reading. That should happen as soon as possible so that the very important work can start in the committee, because there is a lot of work to do.

*Translation]*

• (1530)

**Hon. Lise Bacon:** Honourable senators, as you all know, I am not known for having unclear positions or for refusing to take a stand. However, during this debate on Bill C-20 I must say that, as a former minister in the Quebec government, but first and foremost as a Quebecer, I am somewhat torn. Unfortunately, a large number of Quebecers have also been experiencing the same feeling for over a quarter of a century. Will passage of Bill C-20 eliminate that feeling of being torn? Not at all. However, we must find a reason for this legislation.

I want to express my thoughts by beginning with the easiest part, namely my certainties.

I firmly believe in a united Canada. I believe that pooling the values, ideas, resources and energies of all Canadians is the only way to maintain and improve the quality of life of our society and to expand our influence throughout the entire world.

I am also just as convinced that Quebec has the means to develop within the Canadian federation. Its language, culture, institutions and economy have, in spite of some necessary adjustments, survived, expanded and thrived.

Quebec is also an engine of evolution for all of Canada, because of its different approach to problems and its efforts to achieve a consensus and come up with innovative solutions.

Where all this falls apart for me is when I am "harrassed", asked repeatedly by the Government of Quebec to affirm again and again that I wish to remain a Canadian.

It bulldozes ahead, with no respect for our opinions. We then have no other choice but to conclude that, in order to attain its constitutional goal, the Government of Quebec is tempted to manipulate what is our fundamental right to a clear, free and democratic choice.

In my view, politicians today are unfortunately only too ready to shut their eyes to what is right. When the message does not get across, action is the only course left.

The result, Bill C-20, which is before us today, is an attempt to guarantee the integrity of any Canada-wide constitutional action taken by the federal government or the provincial governments. At the risk of annoying some, this bill is far from anti-democratic, as many leading péquistes would suggest.

By the way, this is the easy way out for people who, since the adoption of article 1 of their platform and for the 30 years their party has been in existence, still want to hear nothing of what the vast majority of Quebecers think about their attempts to make Quebec an independent country.

Despite clear answers, the PQ government is turning a deaf ear. Is that democracy? Setting aside political parties, events have also shown that the wisdom of the people and the deep attachment of Canadians and Quebecers to the values that went into building this country have made this constitutional debate a civilized one nonetheless.

We saw this with the past two referendums. The high turnout confirmed that democracy had been exercised. As for the results, Quebecers twice voted to keep constitutional ties.

Despite all the qualms about the content and the wording of the question in these two democratic exercises, the public understood that this was a yes or a no to Canada — only so much explanation is necessary. The rest is accommodation, negotiation, discussion, conciliation, a hand extended and an essential ingredient that many forgot — good faith.

At present, in the federal-provincial context familiar to us all, the forced repetition of the constitutional exercise is, for the provincial government, nothing more than a way to make us say "perhaps". It is very clear, a matter of clarity, that federalists will remain strongly attached to Canada and that sovereignists will always be motivated by the desire to turn their province into a country.

Is it possible to simply love who we are and work together to perfect this entity of Quebec in Canada? Can we stop talking to each other through legislation?

For years we have been saying the same thing. For years the constitutional debate has got hampered us. For years, on both sides, we have been wasting energy coming up with ways to annoy the other. Could we come up with something else, do something else?

Despite the fact that the people of Quebec have said no twice, it seems impossible. It seems we have no choice but to come up with a legislative framework to ensure that the constitutional matter will be given the importance and rigour due it, since 27 million people will be living with the results.

At the many official presentations or in living room discussions, what seems really to be unanimously agreed upon by federalists, including me, and sovereignist-nationalists alike, is that Quebec should have all the levers it needs to enrich itself and avoid losing its recognition within Canada. We must begin working on this certainty, and I strongly hope this will happen on both sides.

If we step back a bit, at no time or place has the history of humanity been a continuum of good news and sustainable development. Our history is no different. From time immemorial, in Quebec and throughout Canada, people of various origins and cultures have lived together and tried to build a society and achieve a level of security and stability essential to progress.

Our history is therefore full of needs, desires, claims, work, battles, victories and defeats. It is also shaped by the structures put in place over the course of the years to provide this young society with a respect of the fundamental values shared by the population as a whole.

In that sense, the search for new avenues, the freedom to submit them and to discuss them in the public arena is one of the strength of our political system. However, the constitutional debate did not yield the anticipated benefits. Quebecers no longer believe that this is the best way to improve their lot.

So, it is more than time to move on. If we do not quickly start looking after our country, it will probably become something altogether different. It could even become the 53rd state of our neighbours south of the border, or a satellite of the four or five top nations in the world.

Enough talking. Let us pool our energies in each of our respective jurisdictions to promote things, not to constantly give ultimatums and impose restrictions, as if these were so many obstacles to convince each other that it is impossible to live together.

All Canadians, including Quebecers, want health services that reflect Canadian reality. All Canadians, including Quebecers, want stable and adequately paid jobs to meet the needs of their families and to feel good about themselves. All Canadians, including Quebecers, are concerned about young people, about their education and their future.

Are we really that different? Are we just one of the essential colours of a rainbow that goes from the Atlantic to the Pacific? Both sides must stop wasting energy for the sole purpose of finding out what distinguishes the regions of Canada. We will always achieve more through mutual respect and cooperation.

The federal government, in introducing Bill C-20, wanted to set the rules of the game, so that the rights of every Canadian are respected. That is a laudable goal and I will vote in favour of Bill C-20, in the full realization that we were forced by the Parti Québécois government to bring back the constitutional issue and to set benchmarks to make sure the will of Quebecers is properly interpreted.

As politicians and representatives of the public's will, we must realize that the constitutional game is a thing of the past. Canadians and Quebecers, as shown by the poll released on Sunday, are no longer interested in that game. They are asking us, who have the mandate of providing a framework and of making their daily lives easier, to start dealing with the issue that really concern them.

Let us put an end to that game now that Bill C-20 has clarified the rules. Instead, let us turn our attention to what brings Canadians together, to the political actions that will allow each community to positively influence the development of the other.

• (1600)

Let us stop seeking constantly for what divides us and let us, for once, be idealistic and believe that francophones, anglophones, First Nations, all those who have been part of our history in modern times, with the support of all those who have opted to become Canadians, by choice or by obligation, are capable of building a society together.

Let us now take time to define the new Canadian society that will bring people together around fully and freely shared values.

If there are now people who are truly willing to get involved, it is high time, and more than high time, because before long it will be outsiders who will be imposing the rules upon us. Then it will be too late.

**Hon. Lowell Murray:** Honourable senators, in Senator Bacon's excellent speech, on which I congratulate her, she has referred to certain things that divide Quebecers. She is not unaware that Bill C-20 has aroused mixed feelings among her ex-colleagues in the Government of Quebec. Gil Rémillard appeared before the House of Commons committee to express his support for the bill. Her former leader, Claude Ryan, opposed to it, however, as is Jean Charest, the leader of the federalists in Quebec.



Does she consider that this bill is liable to reinforce or to divide the federalist cause and the federalist forces in Quebec?

**Senator Bacon:** Honourable senators, this bill was necessary to clarify the situation. It is necessary now, but we must move on. We cannot have a second one.

On motion by Senator Kinsella on behalf of Senator Tkachuk, debate adjourned.

[English]

## CRIMINAL CODE CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Bryden*).

**Hon. John. G. Bryden:** Honourable senators, Bill C-247 purports to do two things: One, it amends the Criminal Code to direct that a judge, in sentencing someone convicted of sexual assault who has previously been convicted of another sexual assault, must order those sentences to be served consecutively, subject to certain exceptions; and, two, it amends the Corrections and Conditional Release Act to require that a person serving a life sentence for the murder of more than one person can be ordered to serve up to a maximum of 50 years in prison before being eligible to apply for parole. Right now, the mandatory term is 25 years.

I oppose the principle of this bill, the process by which it got here, and the flawed drafting of the bill. First, in my opinion the bill promotes a principle of sentencing that is alien to our Canadian criminal justice system and to the carefully developed principles of sentencing set out in the Criminal Code. Second, the bill is not the result of careful thought or of detailed study. It was cobbled together at the report stage in the other place because the Commons all-party Standing Committee on Justice and Human Rights had rejected every single clause in the original bill in its entirety. Third, even if the Senate were to accept the principle of sentencing advocated in this bill and to overlook the flawed process by which it got here, this bill is so badly drafted that it would require not extensive amendments but a complete rewrite if it is not to throw sentencing for sexual assault and murder into complete confusion.

I should like to consider each of these concerns in more detail, the first of which is my concern that the bill promotes a principle of sentencing that is alien to our Canadian criminal justice system and the carefully developed principles of sentencing set out in the Criminal Code.

Honourable senators, with the possible exception of the Charter of Rights and Freedoms, our Criminal Code and our system of criminal justice constitute our most profound expression of those fundamental moral precepts that bind us into a civil society. This body of law has been carefully expounded and developed over decades — centuries, in fact. The level of care and scrutiny involved in making fundamental changes to this system was recently demonstrated when, just a few years ago, in 1995, Parliament passed Bill C-41. In that bill, Parliament set out, for the first time in Canadian history, those principles that were declared should govern sentencing in criminal cases. These principles were the result of many years of detailed study. They reflected recommendations made over a 13-year period from two white papers, a royal commission on sentencing, a parliamentary committee, and two previous bills that died on the Order Paper. The parliamentary committee, by the way, was chaired by David Daubney when he was a Progressive Conservative member of Parliament. Mr. Daubney is now Coordinator, Sentencing Reform, with the Department of Justice and has testified to the problems with this bill.

Let me read to honourable senators the sentencing principles that were laid down by Parliament just five years ago and became section 718 of the Criminal Code. Section 718 states:

The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following principle objectives:

- (a) to denounce unarmful conduct;
- (b) to deter the offender and other persons from committing further offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparation for harm done to victims or to the community, and;
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

• (1610)

Honourable senators, these are the principles that are to be applied in all cases — not just some cases. These are the principles that Parliament said must govern sentencing for all crimes committed. These are the principles that we trust and we expect our judges to apply appropriately. These principles reflect our society. They reflect Canadian values. They say much about what it is to be a Canadian. Without vindictiveness or without vengeance, their entire focus is ensuring a safe Canada. They uphold standards of conduct in community. Any bill that purports to change the role that sentencing will play or fulfil in Canadian society must be judged in light of these carefully, thoughtfully developed principles.

Honourable senators, Bill C-247 does not reflect these principles. As drafted, the bill would specifically override these principles in several respects, but I will address this issue later when I turn to the many flaws in the bill. For now, I will focus on the underlying premise of the bill.

When I review the transcripts of the speeches of the sponsor and supporters of the bill, in either its first or its second incarnation, I cannot avoid the conclusion that, under the mantra of victims' rights, this bill introduces vengeance as a sentencing principle into our criminal justice system. The concept is founded on the biblical injunction of "an eye for an eye." Let me read you the full quotation from Exodus, chapter 21, verses 23 to 25:

...life for life,  
Eye for eye, tooth for tooth, hand or hand, foot for foot,  
Burning for burning, wound for wound, stripe for stripe.

There are technical problems with a literal application of this principle. Do you rape a rapist, molest a molester? How do you take someone's life twice over if they take two lives? This bill uses prison time instead.

The basic principle of this bill is that the amount of time an offender spends in prison should be directly related to the number of victims and the offences committed. The premise is the more time spent in prison, the better — period. Principles of deterrence, rehabilitation, reparation and responsibility are subordinated to the number of offences committed. Prison becomes a panacea — perhaps a dangerous panacea.

Honourable senators, this approach concerns me not only because it ignores the basic principles of sentencing referred to above, but also because it is not clear that longer prison sentences reduce crimes of sexual assault. In fact, it is by no means clear that more prison time will reduce the likelihood that a particular offender will reoffend. A study prepared just last year for the Department of the Solicitor General of Canada found precisely the opposite; namely, that imposing longer prison terms increases the risk that a person will reoffend.

The data in this study represents the only quantitative assessment of the relationship between time spent in prison and offender recidivism. The database consisted of 325 comparisons.... On the basis of the results, we can put forth one conclusion with a good deal of confidence. None of the analysis conducted produced any evidence that prison sentences reduce recidivism.... The view that only lower risk offenders would be deterred by prison sentences was also not confirmed. The lower risk group who spent more time in prison had higher recidivism rates.

That is from page 11 of "The Effects of Prison Sentences on Recidivism," User Report 1999-24, by Paul Gendreau and Claire Goggin of the Centre for Criminal Justice Studies at the University of New Brunswick, and Francis T. Cullen of the Department of Criminal Justice at the University of Cincinnati.

Another study, published in January of 2000, developed risk assessment procedures specifically to identify the risk of recidivism in sex offenders. The authors are cautiously optimistic about the results so far. One of the policy implications identified from the study reads:

Since the risk level of an individual offender can change substantially, policies should allow for the reintegration of sexual offenders into society and not assume that all those who have committed such offences are indefinitely at high risk to reoffend.

That is from the Solicitor General of Canada research summary of "The Sex Offender Need Assessment Rating," or SONAR, by R. Karl Hanson and Andrew Harris.

If the concern is, as has been suggested, to deal with the most serious serial rapists and murderers — the Clifford Olsons and the Paul Bernardos — is that not why the Criminal Code sets out careful and thoughtful procedures governing dangerous and long-term offenders? If someone poses a danger to the public, then that already can be addressed. This bill adds nothing but confusion.

I believe the bill fundamentally changes the focus from one of finding the right sentence for the particular crime and offender based on the principles laid out in the Criminal Code to one of escalating punishment by increasing incarceration of the offender in increments equal to the number of offences committed. That is a big change.

Honourable senators, this country used to have a criminal justice system based on punishment. The system was weighted very heavily in favour of demonstrating the horror with which society viewed the crime.

I will give honourable senators some examples from the book *Crime and Punishment in Canada: A History* by D. Owen Carrigan, published in 1997.

Jacques Begeon, who killed his neighbour in 1668, was sentenced to be tortured and then taken to the door of the parish church dressed only in a nightshirt, a rope around his neck, and carrying a torch. On his knees he was to ask forgiveness of God and the King and justice for the crimes that he had committed. He was then to be hung on the gallows in the marketplace of upper town, after which his right arm and head were to be cut off and placed on public display, mounted on a stake.

One David McLane was convicted of high treason. He was sentenced to be hanged, but with the proviso that he be cut down alive "and your bowels be taken out and burnec before your face; then your head must be severed from your body, which must be divided into four parts."



Honourable senators, I am not reading these excerpts out of historical curiosity. These punishments were not imposed by our ancestors in the interest of being barbaric. I am sure they were accorded in the genuine belief that this was just for the offender, just for the victims, and would deter future crime. These sentences were imposed at a time long before the sentencing principles enunciated in the Criminal Code. However, even today, in certain societies clearly horrific, indeed repugnant, sentences are still imposed in the name of justice.

On March 17, the *National Post* reported that a judge in Pakistan sentenced a serial child killer to death by strangling, his body then to be cut into 100 pieces, one for each of his victims, and put in acid. He was also sentenced to 700 years in prison for destroying evidence — seven years for each of the bodies the judge said he had destroyed.

This sentence appears to us to be remote and alien. I was, therefore, shocked to read a letter to the editor in *The Ottawa Citizen* that appeared on March 21 of this year. It said:

Finally. Somebody believes in an eye for an eye and I applaud Pakistan's ruling in the case against Javad Iqbal, the child murderer who took the lives of 100 children.... It's about time that one of these monsters experienced the torture they so coldly inflicted on innocent children. Canada should take a lesson.

It is signed "Claire Saunders, Kanata."

Honourable senators, our criminal justice system says as much about who we are and the values we espouse as it does about anything else. What is the nature of Canadian society today? The proponents of this bill have said much about the Clifford Olsens and the Paul Bernardos of this world. However, those are the exceptions. To quote from an article that appeared in *The Globe and Mail* on March 21, 2000, written by Andrew Sullivan, whose brother was murdered:

We cannot learn anything terribly useful from, say, Karla and Paul. —

He is referring to Karla Homolka and Paul Bernardo.

— We cannot learn from them anything useful about the justice system, or fairness, or anything like that; these people are monsters, who do nothing but inform our nightmares.... From truly awful cases, we might learn something about how we ought to change our culture, but the discussion would require a lot more pain than most of us are willing to take, especially in public. In our anger, we would rather hear the desperate cacophony of blood lust.

• (1620)

Would we, as a society, allow ourselves to be defined by these monsters, the Clifford Olsens and the Paul Bernardos? I hope

not. I, for one, would not give these criminals the satisfaction of changing our nation and our fundamental principles and values.

We are a decent society with good, strong values. Crime, in fact, is down. Violent crime has decreased every year of the last six years. I shudder to think what we would become if we were to incorporate principles of vengeance and invectiveness into the principles of justice.

Honourable senators, I fear we would become them. Our values would be indistinguishable from the criminals whom we are punishing. We would be saying that these are acceptable values.

**The Hon. the Speaker:** Forgive me Honourable Senator Bryden, but your 15-minute speaking time has expired.

**Senator Bryden:** I ask leave.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Some Hon. Senators:** Agreed.

**Senator Bryden:** We would be saying that those are acceptable values. Is that what we want to teach our children? Is that the vision we accept for the future of Canada and Canadians?

Moreover, as I will elaborate later, it is not necessary that we change our laws in order to address these extraordinary cases. These individuals have been sentenced. Whether or not they become eligible to apply for parole, I strongly doubt that any parole board would see fit to grant parole. I have confidence in our current system. We have strengthened the provisions of the Criminal Code concerning dangerous offenders and long-term offenders, largely in response to lessons learned from such cases.

I realize many arguments have been raised in support of this bill in the name of victims' rights, seeking some just equivalence in the sentence for the grief and the pain. There can be no equivalency between a crime and its punishment. Is the life of a criminal equivalent for a father or mother to the life of their beloved son or daughter? Of course not. Surely, one does not seek or gain meaning from the death of a loved one in the length of prison term given to the perpetrator.

Frankly, I do not know whether any meaning can be found in a murder. I worry that we delude ourselves and, perhaps, mislead the families of victims into the belief that, somehow, their grief would be assuaged if the criminal spends 50 years in jail before applying for parole, instead of 25 years. These families have suffered unspeakably. They must deal with their grief in any way that they can. However, these amendments will not bring peace. Allow me to quote again from the recent article by Andrew Sullivan in *The Globe and Mail*. He states:

People whose loved ones are murdered get angry. When my brother Matthew was murdered in 1998, I got angry. But angry people should not be consulted as expert witnesses as we try to reform the justice system. We who are angry want our own pound of flesh. Having had it, we will not be quiet: one pound will not be enough. Nothing will be enough. It can't be. There simply is no such thing as "closure" when I talk about my brother's murder in his Buffalo driveway, or when you talk about how your daughter was killed while crossing the street. Those of us who are busy grinding axes cannot mete out justice.

Mr. Sullivan also said:

On the radio, I heard a politician from the Reform Party complaining about how soft the penal system is in Canada. I heard the father of a now-dead man talking about how much harsher penalties would be in another country; he spoke with a sad relish. It seems to me that too many of us are desirous of others' suffering. Perhaps the idea is this: Since violent criminals make others suffer, they, too, should suffer. Gandhi answered that kind of belief: "An eye for an eye makes the whole world blind." There is no recompense in another's suffering.

In fact, victims' rights groups have not sought vengeance. Victims' rights groups call for notification, support and the right to be consulted. These were the findings of a special study conducted in the House of Commons by the Standing Committee on Justice and Human Rights, under the then chairmanship of the late Shaughnessy Cohen. They produced an excellent report aptly entitled, "Victims Rights - A Voice, Not a Veto". It was issued October 1998. Regrettably the sponsor of this bill in the other place, Mrs. Albina Guarnieri admitted that she had not read that report when she defended this bill on the basis of victims' rights.

Honourable senators, many years ago I attended a meeting with the late Chief Justice Ivan Rand. Part of the discussion revolved around capital punishment. He was asked what his reaction would be if he returned home and found that someone had killed his wife and children? Mr. Justice Rand's answer was succinct: "I would kill him, and that is why we have laws, to restrain people like me."

It is this kind of thinking that I believe was fundamental to the careful development of the principles of sentencing that are now enshrined in the Criminal Code, and that now direct Canadian judges.

I believe that the principle of Bill C-247 would undermine and erode these principles. It would mark a terribly retrograde step, to a stage of our social development that we have long since passed.

My second concern is that the bill is not the result of careful thought or detailed study. It was cobbled together at the report stage in the other place because the House of Commons all party

Standing Committee on Justice and Human Rights had rejected every single clause and the original bill in its entirety.

Senator Cools expressed surprise at Senator Nolin's suggestion that the bill is not in concert with the existing principles of sentencing. Senator Cools said that the House of Commons had already passed the bill, and that in the course of the passage she suspected that many people had a look at it.

Honourable senators, and Senator Cools, Senator Cools' suspicion was wrong. The bill in its current form was never studied at all in the other place.

Further, some have appealed for the support of this bill based on the argument that the bill is a victory of Parliament over government. For example, Senator Cools said in her address to this chamber:

In Canada, parliamentary opinion on the administration of Canadian criminal justice is unwanted, particularly on the subject of punishing and sentencing. Bill C-247 is an unwanted parliamentary opinion that passed the Commons by majority vote, despite the fact that it was unwanted by the Minister of Justice.

Honourable senators, this does not tell the whole story. This bill may, indeed, have been unwanted by the Minister of Justice; I do not know. After careful study, I have concluded that the bill would hurt, not improve our justice system. I believe the minister would have had good reasons for that opinion. The bill was also unwanted by the parliamentary committee of the other place, which studied it extensively.

• (1630)

The Standing Committee of the House of Commons on Justice and Human Rights voted down every clause of the bill when it was before them. Amendments to the bill were then negotiated during debate at report stage. The bill, in its amended form, that is, the form before us today, did not receive any study in the other place; and the amendments radically altered the bill. This was an issue highlighted by Paul DeVillers, the Liberal MP from Simcoe North, when he spoke to the bill at third reading during the last session of this Parliament. He was a member of the committee that studied and rejected the bill. He said, as reported at page 15894 of the *House of Commons Debates* for June 7, 1999:

Madam Speaker, much has been said this morning about this debate being a battle of the backbench against the government. There are many members of the backbench who are not in government and have extreme difficulty with this bill and with the fact that it has not been voted through the committee system.

The amendments that are the subject of today's vote were negotiated while the debate at report stage was carried on. There are many issues that should be studied. Certainly many of us feel that this bill should be sent to committee.



Honourable senators, this is not the way we make laws in this country, particularly laws that impinge the liberty of Canadians. This is not the way we should make laws in this country. Are the views of parliamentary committees to be ignored? The committee of the other place took this bill very seriously. They heard witnesses from 15 organizations. They listened to views, both pro and con, including the two professors from whom Senator Cools suggested the Senate committee might wish to hear. The members of the committee then made their decision, and that decision was that the bill should not proceed.

Honourable senators, I believe in the parliamentary system as it has evolved in this country. I take seriously the views of our fellow parliamentarians. When a committee studies a bill, and then decides outright to reject all its clauses, that is a decision that deserves to be taken seriously. The committee did not put forward amendments; it flatly rejected the bill. Read the transcripts, honourable senators. There were no expressions of outrage during clause-by-clause study of the bill. There were no allegations that the process was somehow flawed. There were no suggestions that amendments were somehow railroaded. No, honourable senators, the process was correct and proper. After detailed study, the committee decided to reject the bill.

Honourable senators, it is not accurate to depict this bill as a win for democracy. I view this bill as a serious undermining of democracy because the considered views of those committee members who studied the bill in detail were cast aside and ignored as if no study had taken place.

Finally, honourable senators, this bill in its current form is seriously flawed. According to the proponents of the bill, its purpose is to address punishment for perpetrators of the most heinous crimes, notably serial rapists and murderers; yet clause 1 of Bill C-247 fails to address the truly serious sexual assaults. One might say that it brings a sledgehammer down upon the less heinous crimes, such as non-consensual sexual touching, while ignoring crimes like sexual assault with a weapon, and aggravated sexual assault.

Honourable senators, this also points out the importance of our parliamentary committees. This issue was raised repeatedly in the testimony before the committee in the other place. In fact, the amendments introduced references to these other more serious sexual assaults, but they did it in an absolutely wrong-headed way. Let me explain, honourable senators.

As drafted, the bill would require a judge to order consecutive sentencing in cases where someone is convicted of a so-called level one sexual assault and that person was previously convicted of a level one assault or the more serious aggravated sexual assault or sexual assault with a weapon. There are some exceptions to this requirement, which are also drafted with very strange results, but more on that later, honourable senators.

For now, let me point out that the bill only applies to someone being convicted for this level one sexual assault, such as non-consensual touching. It does not require this consecutive sentencing when dealing with someone with multiple convictions for aggravated sexual assault or sexual assault with a weapon.

Those people would not be subject to this bill. The result is that someone could be sentenced for a longer term of imprisonment for non-consensual touching than for sexual assault with a weapon.

Is this a case of sloppy drafting? Yes. This same sloppiness is apparent throughout the bill. As I mentioned, there are exceptions to this requirement to order consecutive sentencing. Basically, the bill requires — in mandatory language, “shall” — a judge to order consecutive sentences for a conviction of level one sexual assault where that person was previously convicted of any sexual assault charge, unless the judge “is satisfied that the serving of that sentence consecutively would be inconsistent with the principles of sentencing contained in sections 718 to 718.2 of the Criminal Code, in which case the judge may order that the sentences be served concurrently.”

In other words, honourable senators, if consecutive sentencing would be inconsistent with Canadian sentencing principles, then and only then may the judge decide to order concurrent serving of the sentences. Honourable senators, surely, if consecutive sentences are inconsistent with our sentencing principles, then the judge should be required to order concurrent sentencing. Why is there discretion in this part of the bill?

The bill goes even further in this regard. Proposed subsection (3) then sets out the factors to be considered by the judge in exercising this discretion; that is, when the judge is permitted to have regard to things like the nature of the offence, the circumstances surrounding its commission, the degree of physical and emotional harm suffered by the victim, the offender's attitude, criminal record, et cetera. Honourable senators, this is setting our criminal justice system on its end. It is completely backward. The sentencing principles govern first, and then the specific situation is applied to those.

Once again, honourable senators, Bill C-41, which established sections 718 to 718.2 of the Criminal Code, codified, for the first time in Canadian history, those critical principles that Parliament said must govern criminal sentencing. These are not principles to be cast off in the exercise of judicial discretion. To the contrary, they are the very principles that must govern the exercise of judicial discretion.

I could go on at much greater length about the numerous problems with this bill. For example, it requires that a sentence imposed for a level one sexual assault be served consecutively to any other sentence for one of the sexual assault offences. Honourable senators, imprisonment is not the only sentence imposed for sexual assault, especially the level one sexual assaults that are the issue of this bill. Yes, level one sexual assaults include the heinous crime of rape, but, as I mentioned before, this section also covers the whole range of non-consensual sexual touching. They do not all result in a prison sentence. In some cases, for example, a conditional sentence is imposed as the best approach to rehabilitate the offender and reduce the likelihood of a further offence. Again, this problem was pointed out by the committee that studied the bill, but evidently this testimony was also ignored by the drafters of this amended bill at report stage.

These comments evidence the lack of care that has been paid to the drafting of this bill. Yet the bill would have a serious impact on the liberty of Canadians. Amendments to the Criminal Code, arguably the most serious statute we have, cannot be passed in this kind of cavalier and slovenly fashion.

In fact, the proposed amendments contained in clause 1 are completely unnecessary. At the moment, consecutive sentencing applies unless the multiple convictions arise out of one continuing transaction or event. Honourable senators, for all its clauses, nothing in the bill would change this. The original bill would have changed it. It would have required a judge to impose consecutive sentences for an offence "arising out of the same event or series of events and to any other sentence to which the person is subject at the time the sentence is imposed on the person for an offence under subsection (1)."

This language was changed completely by the amendments at report stage. As drafted now, consecutive sentencing under the bill would only apply where the person had previously been sentenced for the other sexual assault offence. It would not apply for multiple convictions imposed at the same trial, as would usually occur for multiple convictions arising out of the same event or series of events.

• (1640)

In other words, this bill would not change the existing law. It is unnecessary. Yet, it could seriously undermine Canadian sentencing principles. Why would we want to do this, honourable senators? What would we possibly achieve that warrants this serious, retrograde step?

Let me now turn to clause 2 of the bill. We have been told very emphatically that the bill challenges the current law that multiple murderers can receive no incremental sentence — not one day, not one hour — for the second, third or even the eleventh life taken in brutal murders that they have committed. We are told that Bill C-247 challenges the notion that multiple murderers should be guaranteed a chance to apply for parole after serving 10 or 25 years of their life sentences, regardless of the number of murders they have committed.

Honourable senators, that is what we were told in earlier proceedings in this chamber, but it is not completely accurate. When one reads the testimony heard by the committee in the other place, one learns something different. In his testimony, David Daubney said that in fact:

...an offender serving a life sentence and still under the 25-year parole ineligibility period who receives a subsequent life sentence for first-degree murder will begin a new 25-year parole ineligibility period as of the date of arrest for that homicide. So if this were to occur after he'd served, say, 24 years, he would face another 25 years of parole ineligibility. Much of what clause 2 of the bill I think wishes to accomplish is already part of our law.

It is also not correct to say that multiple murderers are guaranteed a chance for parole after serving 10 years of their life

sentence. The 10-year parole eligibility clause specifically does not apply to multiple murderers. Under section 745(b) of the Criminal Code, a person convicted of more than one murder charge will not be eligible to apply for parole before 25 years.

Honourable senators, I was most struck by the fact, once again, that the sponsor is exaggerating the effect of this bill. While we are told that the bill will ensure that every victim "counts" in the sentence imposed, in fact the bill only "counts", to use that deplorable phrase, the first two victims. Under proposed subsection (2.3), a person convicted of multiple murders would be required to serve consecutive periods of parole ineligibility but to a maximum of 50 years. Assuming 25-year parole ineligibility for each murder, that means only the first two "count".

Honourable senators, I have begun to think that this bill is more about rhetoric than about criminal justice. With great fanfare, it proclaims that the most serious multiple sexual offenders will now have to serve consecutive sentences for their crimes, but when we look into the matter a bit, we discover that consecutive sentencing exists now and the bill really would not change the current law. When we then read the fine print of the bill, we realize it leaves out altogether people serving multiple sentences for the most serious sexual offences.

With respect to people convicted of murder charges, contrary to the rhetoric, the bill would not add 25 years for every victim ensuring a sentence for the second, third or even the eleventh life taken in the brutal murders that were committed. It would add 25 years to the already-existing 25-year parole ineligibility that applies.

Honourable senators, this points up another of the other fundamental problems I have with this bill. We do not, and we should not, "count" victims. Rather, we deplore and we denounce murder. Is a murder less reprehensible because there is only one victim? No. We have mandated a life imprisonment sentence for murder in the Criminal Code, period. Indeed, one of the most eloquent statements on this bill at committee came from a convicted murderer, Mr. Glen Flett, who is out on parole and devotes his time to working with prison inmates. He said:

I came to argue against this bill because one of my biggest concerns is the way it removes denunciation of the crime of murder, or at least the life sentence denunciation of the crime of murder. I am currently doing a life sentence or 14 years minimum before eligibility for parole. I believe that sentence is life, and not 14 years. I currently have been out in the community for the last nine years on the sentence, and I find that my sentence has been harder here in the community than it was in prison. I've had to face the consequences of what I did.

That is the testimony of Glen Flett on March 16, 1999. Incidentally, Mr. Flett works with victims of crime in his organization as well.



A man or a woman has only one life on this earth. How can we impose any sentence longer than that? The sponsor of this bill has clearly recognized that it is right and appropriate to limit the period of mandatory parole ineligibility. Canadian law has said 25 years. This bill would say 50 years.

Honourable senators, we must not lose sight of the nature of the decision before us. Parole eligibility is not parole entitlement. When Canadian law says a person is eligible to apply for parole, that means that a properly constituted parole board, after hearing representations, including from the victim and the victim's family, if they wish, will decide whether or not the offender, as he or she is at that time, after 25 years in prison, should be released on parole to serve the rest of his or her sentence in the community.

Honourable senators, 25 years is a long time. Can we say a person is more likely to be rehabilitated and fit to enter civil society after 50 years rather than 25? How can we ask a judge to look 50 years into the future and say now what the offender will be like then? Do we pass any laws that cannot be amended, as circumstances change, for 50 years? No. Yet we are asking a judge to make that kind of decision. Is it not better to leave the law as it now stands, allowing the Parole Board to look at the offender after 25 years in prison and make the judgment on the basis of the person as he or she is then, rather than on the basis of the person he or she is today before serving time in jail? What about the Glen Fleets who genuinely change and, in fact, make a positive contribution to Canadian society?

Not surprisingly, there are serious technical issues with this clause as well. First, I question whether the bill amends the correct statute in this clause. Some of this clause correctly belongs in the Corrections Act, but it would be highly unusual to grant the sentencing judge discretion in the Corrections Act. Proposed subsection (2.2) should, it seems to me, go in the Criminal Code itself, along with the other provisions on sentencing.

I also question whether the bill amends the correct section of the Corrections Act. It amends section 120 in the Corrections Act, but that section does not address parole ineligibility for multiple sentences at all. Those provisions are set out in section 120.1 and 120.2. Proposed subsection (2.4) directs a judge in the exercise of discretion in deciding on parole ineligibility and specifically requires — the mandatory “shall” gain — the judge “to have regard to whether the total period of parole ineligibility would adequately denounce the murder and whether it would adequately acknowledge the harm done to the victim.”

Once again, honourable senators, the bill is ignoring the carefully drafted sentencing principles that we passed recently. Is the bill directing the judge not to consider the other sentencing principles, matters like rehabilitation and deterrence? Changing Canada's sentencing principles should require extensive thought and analysis.

Bill C-41, which originally enacted these principles in the Criminal Code, as I referred to earlier, followed many years of

careful study. Do we cast these principles out in this cavalier fashion, in a bill that has not been studied in any serious way in the other place, except by a committee that voted to reject its predecessor entirely? Is this proper? Is this just? Is this the Canadian way?

• (1650)

Honourable senators, I believe that when you look beyond the emotion and the rhetoric, this bill is so severely flawed, in both its principle and its drafting, that it should be rejected. Frankly, to fix the problems would require such an extensive reworking that I doubt we would be within any principle of the bill as it now stands.

Most important, though, to vote for the principle of this bill would mark a serious turning point in Canadian criminal justice. In my opinion, we would be incorporating principles of vengeance into our system. I, for one, have too great a love for Canada and too deep a respect for our role as parliamentarians to take such a step.

Honourable senators, I believe there is a procedure that allows, if it is deemed appropriate by this chamber, a bill such as this to be referred to committee without passing it in principle at second reading stage. If that is the will of this house, then so be it. I am not advocating that because I do not believe there is a salvageable piece of legislation here. However, that may be the wish of honourable senators.

Having said that, I will conclude by quoting once again from the article by Mr. Sullivan, who said:

Supposing that the police tracked down my brother's murderer, we could, I guess, put him in jail forever, or hang him, or fry him with electricity, or inject him with poison. But that would not give me peace, nor would it soothe the wounds of the rest of my family. All it would do is spread more pain.

...

No, let us stop the cries for blood. We have spilled enough. Let us, instead, find some way to find peace — some way that does not involve yet another endless bout of never-sated anger and ever-burgeoning hate, even if that means just being quiet for a while in the face of death. At least the silence will give us time to think about what we do.

Honourable senators, I cannot and I will not support this bill.

**Hon. Anne C. Cools:** Honourable senators, would the Honourable Senator Bryden accept a question?

**The Hon. the Speaker:** Honourable Senator Cools, are you asking a question?

**Senator Cools:** Yes.

**The Hon. the Speaker:** Please proceed.

**Senator Cools:** I am very grateful to the senator for his consideration.

The senator has talked about the Canadian way of doing things. I wonder if the senator is suggesting at all that I am not very Canadian in my way of doing things? The senator has said on several occasions that the sponsor of the bill, namely myself — and I am not wedded to this bill, honourable senators, this is not my bill, it is Ms Guarnieri's bill — has been exaggerating. Could the senator tell me how I have been exaggerating anything to this chamber?

Honourable senators, let me explain very carefully. I feel strongly that when I rise on the floor of this chamber, that senators can know and believe that I speak to them with a high degree of integrity. I want Senator Bryden to tell me how and where I exaggerated?

**Senator Bryden:** Honourable senators, if you look at the transcript I believe you will see that I never used the word "exaggerate". I commented on the bill itself, which in my opinion is not helpful, or worse. I commented on statements that were made on the record in the other place by whom I considered was the sponsor of the bill in the other place. I also commented on and quoted remarks from the Standing Committee of Justice and Human Rights in the other place, and I also referred to a couple of sentences from the transcript of Senator Cools. I was very careful in what I said. I did not say the honourable senator was exaggerating. I said that I believed she was mistaken. I believed there was more to it, and then I went on to quote. Indeed, I would never indicate that she was acting in other than what she considered the best interests of this place. I, like Senator Cools, have a right to my opinion. Once again, I very carefully prefaced my remarks by saying "in my opinion". I invite the honourable senator to check Hansard.

Honourable senators, that is the position. I am simply correcting the record as best I can.

**Senator Cools:** Honourable senators, I thank Senator Bryden for his response, but I remain unsatisfied. When we speak of the sponsor of Bill C-247 in this chamber we are referring to me because this debate is taking place on the floor of this chamber. I am the sponsor of Bill C-247. I have said on many occasions that I am not wedded in any way to this bill. Perhaps I could be wrong, but I am absolutely certain that I heard Senator Bryden say, "the sponsor is exaggerating". I understood that to mean and I heard it to mean the sponsor in this chamber.

If that is not Senator Bryden's intention, then I am happy to sit down and to say that I misheard or I misunderstood. However, I heard Senator Bryden say, very clearly, "the sponsor". In this chamber I am the sponsor. I wonder if Senator John Bryden could clarify?

**Senator Bryden:** I shall do the best I can. I attempted to make it clear that — and I indeed used the MP's name in the transcript — I was referring to the person who had sponsored the bill. Once again, though, I may be wrong but I do not think even there I used the word "exaggeration".

When I was discussing what happened in this chamber, I twice referred to Senator Cools by name because I was quoting her. Those are the instances. If Senator Cools has drawn another impression, that is unfortunate, but that certainly is what I intended to say and I believe that is what I said.

**Senator Cools:** I will review the record with some care, but what I heard, as sponsor, was the honourable senator talking about the bill in this chamber. The sponsor of the bill in the other chamber really has no place in the debates here because we are required to be respectful of how we speak, even of members of the other place. For the purposes of this debate, sponsor means me. However, I can leave that for another day.

I should like to make it quite clear, honourable senators, that when I rise to my feet in this chamber I always try to be noble, magnanimous and fair. Any honourable senator who cares to examine the record here will see that my record speaks for itself. We will leave that discussion to another day.

Honourable senators, I can tell you that I go to great trouble to check every word that I say. I put in endless hours of work so that senators can know that when I rise to speak I speak from a position of very high regard for this chamber, and with integrity. There are many things people can say about me, but that I exaggerate is not one of them.

• (1700)

My real question to Senator John Bryden is as follows: He has said that the four principles of sentencing are retribution, deterrence, rehabilitation and proportionality. I believe he said that those are the four principles. The old word for "rehabilitation" was "reformation", the change in the offender himself.

Could Senator Bryden tell me exactly how Bill C-247 deviates in any form or fashion from the principles of proportionality and reformation?

**Senator Bryden:** I do not want to repeat my speech, but I will say once again, for "correction" purposes, that there are not four principles of sentencing; there are, in fact, six:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, an acknowledgement of the harm done to victims and to the community.



Those are the principles that took so long to devise and that are in place.

I have gone through the bill as carefully as I can, and I have presented my position as carefully as I can. If it still is not clear enough for Senator Cools, I have no way of making it clearer. I have unfortunately taxed the patience, which I usually do not do, of the Senate. There is very little that I can think of that to add to what I was able to bring forward here today, except, perhaps, details of changes in the bill itself.

**Senator Cools:** I accept that Senator Bryden has said what he has said. However, let me be crystal clear again, honourable senators, because obviously I will have to spend some time to chisel out these issues. I know a lot about sentencing because I myself served on the National Parole Board for some years. The two essential principles about which the bill hovers are the question of proportionality in sentencing and the question of reformation. I can revisit that matter another day.

Senator Bryden led me to understand that he understood that Bill C-247 would cause a judge to sentence offenders, for example, in the instance of first degree murderers, to an additional 25 years of parole ineligibility. I believe Senator Bryden said something to the effect that not all the murders would count, that only two would count.

Would Senator Bryden help me a little bit? It is my understanding that, on the second offence, a judge would have the power to give an additional amount of time for another offence but that there is no absolute maximum that he would have to give for each. In other words, if a murderer were to be convicted of a second and a third and a fourth first-degree offence, he could get 25 years parole ineligibility on the first one, and on the second and third and fourth he could get an additional five years, an additional six years, all to a maximum of 50. Is my interpretation accurate, or is Senator Bryden's, as presented to the chamber, accurate?

**Senator Bryden:** As strange as it may seem, we may both be accurate.

I believe what I said was that this bill purports to make a maximum ineligibility to apply for parole of up to 50 years. I did not exclude the fact that you could say, "No, we will not give you 15 years; it will be five years for the second one or the third one."

I believe Senator Cools is correct in saying that if you get ineligibility for parole because you have committed one murder and you have been sentenced, then if you are convicted of committing another murder there is no requirement in this bill that the additional ineligibility imposed by the judge would be the full 25 years. It could be an additional 10 or whatever.

Nevertheless, the point that I was making may be different than the one that Senator Cools is attempting to make. The point that I was making is this: Does it really help us to change the maximum eligibility to apply for parole from 25 to a maximum of 50? Honourable senators will have to draw their conclusion in relation to that. To use an example, suppose the judge, on a third

or fourth conviction, puts in seven and one half, seven and one half, seven and one half, and they all add up to 23. Then suppose that the person gets out of jail and proceeds to kill five more people. Do those five get the balance of what is left of the 50 in six-month stages?

This is the major concern I have with this bill. If you are only sentenced to a year for the last murder, whereas when you committed the first murder you got a maximum of 25, does that mean that the person who was killed last is somehow worth less than the person who was killed first? You cannot, in my opinion, quantify it. As was said very well by a person who is doing a sentence for murder: A life sentence is that — it is for life, and you only have one life.

I would like to leave it there. I have been instructed that it is possible to decline to answer questions, but I do not want to do that. On the other hand, I do not want to go too far with the patience of our colleagues.

**Hon. Nicholas W. Taylor:** Honourable senators, I should like to address a question, but seeing that the honourable senator might say "no" to a question, may I ask him for a clarification?

**Senator Bryden:** I tried.

**Senator Taylor:** The honourable senator mentioned deterrence and vengeance. I thank him for a scholarly, thought-provoking breakdown of the whole area of sentencing for what used to be called capital offences. In the drive behind the sentence, it is easy to see that where one judge could be thinking deterrence another judge could be thinking vengeance. In the end, how is it possible to determine whether a sentence was meant as a deterrence or whether it was for vengeance? Is that not a very subjective decision? How do you fit vengeance into the equation? The end result is five years or fifteen years, whatever it is. It could be a deterrent, or it could be vengeance.

**Senator Bryden:** I did do my homework, and I do have some working knowledge of the good book. In Paul's epistle to the Romans, it says, "Vengeance is mine, sayeth the Lord." There is no reference to vengeance in the principles that govern sentencing in Canadian criminal courts.

You asked which of the principles would govern. Judges are human. I assume that, in a given case, one might put additional emphasis on one area as against others, but the intention is that, in imposing a sentence, all six of these carefully considered principles be taken into account by the sentencing judge. I assume that, in individual cases, a judge may very well give more emphasis to one area, depending on the situation. We must remember that we are not always sentencing for murders and heinous crimes.

• (1710)

The honourable senator's question brought it all to the fore; that is, what is a judge supposed to consider? That is why this list exists. No judge would be doing his job properly if he did not consider each one of those principles in passing sentence. He need not necessarily give them equal weight, but he must consider all those principles at sentencing.

**Hon. Pierre Claude Nolin:** Honourable senators, I wish to thank Senator Bryden for the very interesting lecture.

Has Senator Bryden evaluated whether Bill C-247 would pass the test of section 12 of the Canadian Charter of Rights and Freedoms? For the benefit of our colleagues, that section of the Charter reads:

Everyone has the right not to be subjected to any cruel and unusual treatment or punishment.

Has Senator Bryden considered that, or only section 718 of the Criminal Code?

**Senator Bryden:** I did not consider section 12 in detail. In her address, Senator Carstairs emphasized her concern about section 12. Therefore, that is on the table.

My concern is that even if it were found not to be cruel or unusual punishment, from a criminal justice point of view it seems to be a dramatic shift from the direction in which we had been going, which appears to have been very successful.

Canada already has the second highest incarceration rate in Western society. That was my emphasis. The types of punishment, other than a maximum of 50 years rather than 25, can be found in the current Criminal Code with consecutive sentencing, and so on. My argument in that regard is that the bill does not add much within the sentencing principles. The bill goes outside of the sentencing principles and reverses not the onus but the preponderance, that is, the requirement to have consecutive sentences for these specific offences unless something else occurs.

On motion of Senator Taylor, debate adjourned.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### EIGHTH REPORT OF COMMITTEE—DEBATE ADJOURNED

The Senate proceeded to consideration of the eighth report of the Standing Committee on Internal Economy, Budgets and Administration (Accessibility for Persons with Disabilities) presented in the Senate on April 10, 2000.—(*Honourable Senator Nolin*).

**Hon. Bill Rompkey** moved the adoption of the report.

He said: Honourable senators, the eighth report of the Standing Committee on Internal Economy, Budgets and Administration, presented yesterday in the Senate, deals with an action plan on accessibility for persons with disabilities. The action plan was developed by a working group that was headed by Senator Carstairs and Senator Robertson and included Senate staff members. This group worked in close cooperation with representatives of the disabled community to develop a plan that addresses such subjects as employment goals, the kinds of facilities needed in the Senate for persons with disabilities,

public information objectives, and the provision of technical assistance, aids and devices to persons with disabilities.

The eighth report describes the milestones and achievements made by the Senate over the past few months since the document entitled "Senator's Guide to Disability" was tabled last December. The report also outlines the initiatives the Internal Economy Committee plans to implement during the fiscal year 2000-2001. They include finalizing a disability training kit, training sessions for managers and staff, and incorporating accessibility issues on the Senate Intranet.

Honourable senators, Canadians have a right to participate fully in the affairs of the Senate. We believe that this action plan sets out an excellent blueprint for improving the participation of persons with disabilities. On behalf of the Standing Committee of Internal Economy, Budgets and Administration, I wish to thank Senator Carstairs and Senator Robertson for their initiative and work. Credit is due them more than anyone else. Senate staff worked with them in developing this plan, but they provided the leadership and the initiative. I thank them for their work on this document.

Honourable senators, I recommend the adoption of this report.

**Hon. Brenda M. Robertson:** Honourable senators, I am pleased to speak to the eighth report of the Standing Committee on Internal Economy, Budgets and Administration.

In our Canadian democracy, we subscribe to the rule of law and we must be diligent to ensure that our laws foster genuine freedoms. We hope that our laws provide a fair and equal opportunity for all citizens to achieve their productive potential and to fulfil their citizenship responsibilities in our society. In our society, real equality is a liberating experience clearly defined by our Canadian Charter of Rights and Freedoms.

I know that all senators would defend their rights to equal protection and equal benefit under our laws and our Constitution. However, circumstances and situations exist that may prevent some citizens from enjoying the rights and freedoms most of us take for granted. There may exist unintentional but, nonetheless, real obstacles to equality — artificial barriers that require our attention and our action.

Honourable senators, that was my concern when I raised in the Senate, in February of 1998, questions about accessibility and participation in Senate affairs by Canadians with disabilities. Today, I am happy to join with Senator Carstairs and the committee members here in recommending that the Senate adopt this report, which certainly benefits the 4.2 million Canadians who have a disability and which brings credit to the Senate of Canada.

Over the past 18 months, colleagues here in the Senate and officials of the Senate have worked with people with disabilities to produce the Senate Action Plan on Accessibility for Persons with Disabilities, which capitalizes on our creative energy and passion for equality. It is a plan that puts a special focus on full participation and accessibility.



The Senate has made some progress over the years in addressing disability issues. Some of the issues were raised by visitors to the Hill, Senate employees and senators themselves who have a disability. We have made progress but we all acknowledge that there is much more to be done.

What is the purpose of the action plan? The plan is a coordinated effort to build on our accomplishments and respond to the expectations of the Canadian public. Our principal goal was to make the Senate a model of equality and to make the Senate one of the most accessible parliamentary institutions in the country. To do this, our action plan encompasses special initiatives on employment, improvements to our facilities, the provision of technical aids and devices, better access to public information, and attention to health and security measures. The plan is comprehensive and impacts the policies and practices of the Senate in nearly every sphere of activity.

Honourable senators, there will be new guidelines for selecting sites for committee hearings off Parliament Hill; demographic surveys will be undertaken to help develop targeted employment initiatives; publications and information materials will be made more accessible.

The work experience program for persons with disabilities will be improved and an inventory of aids and technical devices to accommodate special needs will be established. These are just a few of the highlights of the action plan, but allow me to make one other point on this matter.

• (17:00)

In one way or another, everyone in the Senate, both honourable senators and staff, has some degree of responsibility for the success of this enterprise. While the administration will be handled by senior officials of the Senate, honourable senators have a job to do as well. You will recall receiving the little book last December entitled "A Senator's Guide to Disability." That little handbook contains about 20 pages of basic information about disability in Canada — who does what and how to get help. It is also designed to support our leadership responsibilities in our respective communities. It will be helpful in your understanding of the role that you can play in making equality a reality.

The Senate action plan on disability also requires our diligence and attention. Officials need our guidance and our support. All of us need advice from the public, and particularly from Canadians with disabilities. In the final analysis, this plan is just a first step toward the goal of full participation and accessibility. It should be reviewed and revised every year, possibly to coincide with International Disability Day, which is December 3.

Honourable senators, I applaud those who worked so hard in preparing the Senate action plan on disability and look forward to continuing my involvement in this project. I want to specifically thank Senator Carstairs for her good work in this project and all the staff members who worked very hard and very diligently. We changed directors a few times but they still got the

work done. I wish to conclude my remarks by supporting the adoption of this report by the Senate.

On motion of Senator Hays, for Senator Carstairs, debate adjourned.

## FINANCING OF POST-SECONDARY EDUCATION

### INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Atkins calling the attention of the Senate to the financing of post-secondary education in Canada and particularly that portion of the financing that is borne by students, with a view to developing policies that will address and alleviate the debt load which post-secondary students are being burdened with in Canada.—(*Honourable Senator Graham, P.C.*)

**Hon. B. Alasdair Graham:** Honourable senators, I should like to add my contribution to the debate on the inquiry into the future of post-secondary education initiated so well by the Honourable Senator Atkins earlier this year. In a carefully argued address in this chamber on February 22, we were informed that Senator Atkins wished to examine what he viewed to be the three major problems that beset education in Canada: our high dropout rate, the lack of adequate preparation of our young people for the workplace, and the evident need to revisit the method of funding post-secondary education in this country. I wish to comment on all three of these problems and introduce three areas of concern that may be, in themselves, of equal merit in what I regard as a continuing process of national discussion over the goals and the future direction of our post-secondary institutions.

Honourable senators will recall that the Special Senate Committee on Post-Secondary Education was established in August of 1996 and issued its final report in December of 1997. Many of the issues examined at the time remain highly relevant in our country as we enter a new century. I draw attention to that excellent report, which ranges over issues such as student loans and debts, the question of our initiatives as a country in attracting international students, and the great need for the Government of Canada to make a long-term, strategic commitment to funding research and development in post-secondary institutions. I will return to that question in the course of my remarks. I do not intend to outline the great wealth of knowledge available in this report; I wish merely to point out the merits of reading the recommendations as a prelude to serious debate on this subject in this chamber.

First, I should like to express my agreement with Senator Atkins' observations on what he regards, properly, to be our unacceptably high dropout rates. I prefer to take a different departure point on this whole general issue of participation levels in post-secondary education.

As a sweeping report of Statistics Canada and the Council of Ministers of Education made clear recently, education levels, already high by international standards, have improved substantially over the last decade in this country. In fact, more young people graduated from high school and more high school graduates went on to higher education in that period. The report concluded that in 1990, 20 per cent of people aged 25 to 29 in Canada had less than high school education. By 1998, that percentage had dropped to 13 per cent. Also, between 1990 and 1998, the percentage of individuals in this age group who had university degrees rose from 17 per cent to 26 per cent. Internationally, among member nations of the OECD, Canada had the highest percentage of the population, about 48 per cent, with post-secondary education in 1995, compared with the OECD average of 23 per cent. Those were the last figures I was able to acquire.

In 1995, we spent 7 per cent of GDP on education, the highest among the G-7 countries. The OECD average was 5.6 per cent, while the U.S. recorded 6.7 per cent, obviously the second highest level.

Honourable senators, I should like to point out further that Canadian students have done extremely well on international assessments of student achievement measuring performances both in math and in science. One measure of this performance is known as the TIMSS, the 1995 Third International Mathematics and Science Study. The results show, among others, that Canadian students in grade 8 placed above the international averages in science and scored most favourably with the international average in math. Our very high investment in education does seem to be getting some of the desired results. Looking at the macro indices, we can take some genuine pride in terms of our competitive successes.

I now wish to think through some of Senator Atkins' comments on what he views to be the second major problem besetting education, namely, the perceived lack of adequate preparation of our young people for the workplace. I believe that there is a lack of adequate preparation as well, but I start from slightly different premises.

The recent report of the Expert Panel on Skills, prepared under the auspices of the Advisory Council on Science and Technology, examined the skills picture in five strategic industry sectors in this country, such as aerospace, biotechnology, information and communications technology, and so on. The advisory panel found that there is no shortage of high technology skills in Canada; rather, there is a shortage of opportunities — that is, a mismatch that governments and industries must address if the high educational levels of our graduates are to be adequately channelled into the knowledge-based economy. The report noted that:

On the whole, Canada's education...systems appear to be keeping up with the demands of Canadian employers for technically skilled people.... In some highly specialized and advanced fields of study, Canadian universities are producing more graduates than Canadian firms currently can absorb.... In sharp contrast with the technical skills picture, but equally critical to the competitive success of Canadian industry, is a persistent shortage of people who combine strong technical abilities with essential skills, such as communications and teamwork.

Honourable senators, most employers expect technical competence from recent post-secondary graduates, but they believe that the softer management and essential skills will be acquired through progressive work experience. The report goes on to suggest "the need to revisit both what and how young people are taught, and whether or not schools and businesses could prepare them better for the world of work."

• (1730)

I believe that Senator Atkins opens up an important problem here for continued and extensive discussion. I have no doubt that business can play a role in terms of more direct involvement in the education process. I believe government initiatives, such as those observed in Ireland and the United Kingdom — in terms of providing small firms with the means to hire highly educated but inexperienced graduates whose skills would help them innovate over time — help so-called SMEs, or the small businesses combat the disadvantages of smallness. These kinds of programs, along with the enormous potential of industry sector councils, for example, are essential in better preparing our graduates for the wonderful world of work.

However, I believe we must look elsewhere for the sources of industry complaints about the needs to revisit what and how our young people are taught. I pay tribute to Senator Lois Wilson's recent reflections on the essential value of a well-rounded general education, seeing the importance of communications and the humanities, among others, as just as valuable to future employability as technical and/or technological training, if not more so.

Senator Wilson made reference to the Ontario government's one-sided lavishing of funds on high-tech courses at major universities as juxtaposed to the starving, as she put it, of the liberal arts and smaller schools that focus on them.

I wish to thank Senator Wilson for her timely and highly significant remarks on this important subject. I agree wholeheartedly with the fact that education must provide a balance between skills and humanities, between science and communications.



Ironically, I find myself in company with whom I do not always or often agree, and that is the executives of Canada's high-tech industries. Last week, 30 CEOs demanded greater funding of the liberal arts. Their communiqué, which I believe was completely unanticipated, was, I might add, what could be regarded as an historic reversal for an industry that has complained vociferously over the years that our post-secondary institutions are not providing sufficiently skills-based education. Now it would appear that they are contradicted by recent findings showing that there is no shortage of high technology skills in Canada. Finally, we see these captains of industry publicly arguing for balance in funding, reasoning that industry cannot build the digital economy with technology graduates alone. The CEOs have obviously come to understand that there is an equal and, in many ways, urgent need for broadly educated people, culturally literate decision-makers who think creatively, who reason well and can also write and speak.

Honourable senators, it is no longer old-fashioned to believe that education must concentrate on the maximization of the talents of the whole person. The pendulum is now shifting back, and rightfully so, to the value of a liberal arts education. Increasingly, technology leaders and entrepreneurs are warning that we are in danger of making a huge historic mistake by focusing purely on technical education.

I will now turn to Senator Atkins' very perceptive remarks on the current crisis in student debt, as well as the problems he presented which related to student funding overall. I was particularly struck by his comments on the post-war initiatives for war veterans. Because of these programs, he concluded:

Canada had an energetic and well-educated workforce which helped make Canada one of the leading nations in the world in the 1950s and the early 1960s.

I believe there is a great deal of truth in this. I believe that Senator Atkins is correct in emphasizing that without considering he means by which Canadians did things in the past, we cannot stand on solid ground in examining the means to build a better future.

I need not go into the subject of the issues of costs and high debt loads, as Senator Atkins, Senator Wilson, Senator DeWare and Senator Callbeck have very effectively demonstrated the magnitude of what I fully agree is a financial crisis facing those enrolled in post-secondary institutions in this country. I do want to congratulate all of the senators whom I mentioned a moment ago for the excellent presentations and contributions they made to this debate in this chamber.

Honourable senators, it is a reality that as governments have cut spending on higher education by 27 per cent over the last decade, tuition fees have more than doubled in most parts of the country. Rising tuition has resulted in climbing debt. University graduates carry an average debt of more than \$25,000. Some have school owing \$60,000 or more.

**Some Hon. Senators:** Shame!

**Senator Graham:** What are the solutions? We know that many OECD member nations such as Austria, Denmark, France, Germany and Ireland charge no tuition fees to students. Can our country feasibly follow such an example?

With regard to debt repayment, we have heard much of the Australian model of an income-dependent repayment plan in which payments are pegged to a person's annual income and collected through the income tax system, helping to ensure that graduates are not bankrupted by loan repayments.

As we continue the debate on Senator Atkins' motion, we will, no doubt, hear many more comparative examples in the days ahead. We will begin to sketch out the outlines of an iceberg of epic proportions with regard to the problems facing our post-secondary institutions. We know that apart from the critical avalanche of increasing costs and the financial crisis facing many of our students, our struggling universities must prepare for a dramatic increase in new enrolments. It is estimated that our post-secondary institutions face a 20 per cent increase in the demand for places over the next decade.

Along with the tremendous strain that soaring enrolments will have on infrastructure and services, we must factor in the need to hire up to 32,000 new full-time faculty by the year 2010 to deal with the crunch in enrolments, as well as to replace those professors going into retirement.

The federal government does have a strong role to play in the strategic consideration of the problems that lie ahead.

**The Hon. the Speaker:** Honourable senators, I regret to interrupt, but the 15-minute time limit has expired. Is leave granted to allow the honourable senator to continue?

**Hon. Senators:** Agreed.

**Senator Graham:** Honourable senators are aware that, due to a variety of means, ranging from transfers under the CHST and Canada Student Loans, the federal government has contributed about half of the cost of post-secondary education in Canada. Clearly, the Senate of Canada is well placed to consider the strategic choices best applicable to difficult problems in our post-secondary education.

I should now like to recount some of my concerns over the so-called investment deficit in Atlantic Canadian universities.

While Atlantic Canada represents only 7.8 per cent of the Canadian population, in terms of higher education Atlantic universities have 12 per cent of the nation's faculty and 12 per cent of Canada's university graduates. They play a key role in the region's economy, yielding 2.2 per cent of the region's GDP compared to a Canadian average of 1.4 per cent. They also rank consistently high in terms of national comparisons of Canadian institutions. However, we have seen a major deficit in R&D funding over the last few years as governments have cut back on expenditures for this critical sector.

• (1740)

When we consider the funding provided by industry, a key partner of development funding across the country, we are struck by how little R&D has grown in Atlantic Canada. An important new report on the state of Atlantic Canada's post-secondary institutions, entitled "Catching the Wave of Research Investment," concludes that "between 1989 and 1995...industry has increased its level of R&D funding in the Atlantic by a mere 2 per cent as compared with a national increase of 47 per cent over the same period."

Let's put this in context. Honourable senators are aware that our universities are key contributors to our knowledge-based society. In Canada, we are comparatively more reliant on this sector than other countries, as almost one quarter of our R&D is done in our universities. That is the highest proportion of the G-7 countries.

There is a serious deficit in Atlantic Canada, based largely on the fact that we lack central Canada's strong industrial and non-governmental base, which are the primary sources of the wave of research investment that we see in other parts of the country. The problem is exacerbated by the fact that Atlantic Canada is proportionately more reliant on its university sector than other parts of the country.

As universities across Canada and the United States begin to face faculty shortages over the next few years, there are some fears that the Atlantic region will be less capable of gaining the stars of the academic community. Therefore, Atlantic universities are particularly concerned that the federal government's new 21st century chairs do not locate primarily in central Canadian universities. Such an approach would give central Canadian universities an unfair advantage in attracting the best and brightest from Atlantic universities and graduates.

In this context, the submission by the Council of Nova Scotia University Presidents, dated November 22, 1999, to the Voluntary Planning: Fiscal Management Task Force raises several alarms. The submission is aptly entitled, "Nova Scotia: A Knowledge Economy Dropout?"

The authors of the report argue that no region can catch up to the leaders in the knowledge economy by just working harder and longer and faster. We must work smarter, but smart costs money, as well.

We are told that the steady decline in government grants to our universities has produced a calamity of the highest order. The report tells us that Nova Scotia spending per university student, when compared with the other provinces, ranks last. That lag is particularly worrisome insofar as financial support for the R&D sector is concerned. The Council of Nova Scotia University Presidents appropriately identified R&D as "our lifeline to the future."

Given the number of firms in Nova Scotia with active R&D efforts, it has fallen to the heroic efforts of our struggling universities to carry the torch.

The great fear in my part of the world, honourable senators, is that that lifeline to the future will be lost. Another fear is that Nova Scotia's best teachers and researchers will be poached by post-secondary institutions in central Canada and the United States, institutions that have greater research and development funding and core university facilities. We are confronted with the truly tragic prospect that the university system of which we are so proud, and which consistently leads national comparison polls, will suffer a brain drain of unimaginable consequences to the future of the Atlantic region at large.

The 1997 Senate inquiry touched upon this problem — and it has, as predicted, worsened in the intervening few years. The authors pointed out that federal funding for research and development tied to partnership arrangements between our post-secondary institutions and our corporations helps to enlist the latter sector's support, and that this is highly desirable. However, given the uneven geographic distribution of major corporations in Canada, the results of an undue emphasis on such partnerships would almost certainly cause an increase in the comparative disadvantage to which our regional institutions are already subject.

The recommendation from the Special Senate Committee was:

...that the federal programs of assistance to post-secondary education be structured in such a manner as to ensure...the elements of the overall program of support recognize and compensate for the significant regional disparities that characterize our post-secondary system; and that the support programs endeavor to derive the maximum benefit from realizing the full potential of all of our colleges and universities.

The recent federal budget has given a much-needed jumpstart to some of the difficulties faced by our universities. The increased funding for the Canada Foundation for Innovation and the increase in the tax exemption for scholarships are preliminary steps, as is the Government of Canada's recent announcement to put in place alternative arrangements to ensure the uninterrupted delivery of the Canada Student Loans programs.

I believe that Atlantic universities will benefit from the increased federal commitment to research through the Chairs for Excellence initiative that was announced recently. This is a program that does not require matching funds from the provinces and, therefore, is a step in the right direction.

Honourable senators, the fact that we live in a world where change is the only reality is well understood by all of us. Continuous learning is the engine of the knowledge economy. Universities must transform themselves as the race for the future taxes their resources to the limit. Governments across the board must work closely together and in partnership with industry in eliminating all impediments to unleashing the talents of our young people.



As we respond to Senator Atkins' timely intervention on education, we only begin to touch upon the enormous questions posed by an Information Age that has meant one of the greatest transitions in recorded history.

We speak of national goals. What are those national goals? Do we speak of education just in terms of a population that is skilled in high technology, or do we speak of education as a balance between skills and values? What kind of students are we trying to educate in this country? Are these to be information-literate workers who think only in terms of corporate norms? Are these to be applied scientists and formidable talent in the laboratory but having an inability to communicate effectively with others? Do we use new technology to disseminate information more effectively, or should our post-secondary institutions be equally dedicated to using new technology to get students involved in political activity, or honouring history or things like spiritual growth? To which values do we as a nation adhere? What values will we carry with us as we travel through cyberspace?

I believe that the classroom is where technology must acquire a human face. The classroom must be where our young people come to understand that winning is about much more than market share. It is about value, service, and commitment to our roots. Honourable senators, that is the Canadian way, and that really is the miracle of the red maple leaf.

Yes, the classroom. Just think of our children, our grandchildren, and the wonderful new generation called the eco-boom — a huge population wave and the demands they are now making on all of our systems of higher learning. How do we start to think about them? How do we think about the energized explosive dynamism of this analytical, smart, savvy, innovative, curious generation — a generation empowered by the most important learning mechanism in recorded history, the Internet? It is an interactive generation with a globally oriented ease with digital tools. It is a wave that has only begun to spell a sea change in the way we think about higher education.

I thank Senator Atkins for the good sense that he had in calling our attention to the problems and challenges facing our post-secondary institutions. I have opened some other windows in this debate, which I believe must be explored further in this chamber and indeed across the country.

• (1750)

I believe the future of this country will be closely bound to the creation of a fair society that is united in the opportunity to access information, a true democracy, a knowledge democracy. We must build that knowledge democracy from coast to coast to coast, ensuring that all of our citizens, all of our universities and all of our young people have the right and the means to travel the information highway first class.

On motion of Senator Andreychuk, debate adjourned.

## THE BUDGET 2000

STATEMENT OF MINISTER OF FINANCE—  
INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Lynch-Staunton calling the attention of the Senate to the Budget presented by the Minister of Finance in the House of Commons on February 28, 2000.—(*Honourable Senator Stratton*).

**Hon. Terry Stratton:** Honourable senators, I rise to speak to the last federal budget presented by Finance Minister Paul Martin.

When middle-class Canadians hear glowing reports about the economy, and when they read that the TSE has been at record levels, many of them wonder why all this is passing them by. They wonder when they will begin to reap the benefits of a stronger economy.

Honourable senators, they will have to wait a few more years, as the government delivers nickel-and-dime tax relief now, with a promise of more to come by 2004. After all, if taxes were cut faster, where would the government ever get the money for that fountain in Shawinigan? We cannot continue to subject Canadians to tax levels that are way out of line with those in the United States and other G-7 countries. Last year, the Prime Minister told Canadians who do not like our taxes that they should leave the country. That is a wonderful statement to make to Canadians, especially when he is building his fountain. That kind of statement reflects the views of the world in the 1960s and the 1970s.

Thirty years ago, the brain drain was to Canada, the result of a robust economy and an unpopular American military policy. Add in factors like health care and crime, and Canadians thought long and hard about leaving.

Honourable senators, attitudes and circumstances have changed since the 1970s. The factors that dissuaded our best and brightest from moving to the U.S. a generation ago hold little water today. Their new employer will pay their health insurance costs, providing them with access to a system where waiting lists are measured in days, not months or years. They are likely to live and work far away from the inner city areas where crime is a problem. The Vietnam War and the anti-American sentiments that it spawned are unknown to today's graduates.

Honourable senators, before the budget, our personal income taxes were the highest in the G-7. After the budget, they are still the highest. The tax relief in this budget is too little and it does not come fast enough. One example of that is the \$100 increase in the basic personal amount this year. That actually works out to a tax cut of just \$17 per year, or 33 cents per week. You cannot even buy a cup of coffee for that amount of money. Eventually, by 2004, the basic personal amount will rise to \$8,000, mostly because of inflation.

Honourable senators, what is the justification for taxing Canadians with incomes as low as \$8,000 — a sum that falls below what one would earn working for minimum wage just about anywhere in the country? As a start, the basic personal amount should go up to at least \$10,000, if not more.

Then there is the increase in the start of the middle tax bracket to \$30,004 from \$29,590 for this year. That will save one the grand sum of 72 cents a week — again, not enough to buy a cup of coffee. All that has happened is that inflation is no longer putting taxpayers into a higher tax bracket. What the government has really done is cancel a tax hike, through deindexing. Many of the tax cuts in this budget are really promised for sometime after the next election. The party that vowed to scrap the GST, if elected now, promises tax relief after the next election.

With respect to the Child Tax Benefit, I welcome the government's general direction in raising the Child Tax Benefit and its supplement, the National Child Benefit.

**Some Hon. Senators:** Hear, hear!

**Senator Stratton:** However, there are two major flaws in the design of this supplement that should be fixed. If we were to add up all the clawbacks and the taxes faced by larger families, we end up with tax rates that reach 70 per cent for families with three children, and well in excess of 80 per cent for those with more than three children. Let us look at the math. Let us start with the example of a family with three children earning \$28,000 per year in 2002. Let us assume that the breadwinner earns \$1 extra of income.

First, there is the 17 per cent federal income tax. My wonderful province of Manitoba, like many others, will move to a new tax system, where taxes will be based on income rather than on federal taxes payable. Let us assume for the sake of argument that the result is much as it is today, that is, where provincial taxes are 47 per cent of federal taxes. The end result will not change by more than a few percentage points.

Applying Manitoba's 47 per cent tax rate to the 17 per cent federal tax equals 8 per cent of each additional dollar of income. Then there is the provincial surtax of 2 per cent of net income. Thus, all the federal and provincial income taxes now add up to 27 per cent. Then there is the 5 per cent clawback of the GST credit. We are now at 33 per cent. If you have three children, the new improved National Child Benefit will be clawed back at the rate of 33.4 cents for every dollar one earns above roughly \$22,000, bringing the total bite up to 66 per cent. Payroll taxes will take another 5 per cent of tax credits. Add it all up, honourable senators, and you will see that 71 cents out of every additional dollar earned is lost to taxes and clawbacks over an income range of about \$4,000.

That is pretty astounding. The government will go into your pocket for 71 cents of the extra dollar you earn.

The National Child Benefit supplement is designed so that it is fully phased out for families with three or fewer children by the

time their income hits the start of the second tax bracket, and by the time the clawback of the main Child Tax Benefit begins.

What about a family with four or more children at \$31,000 after the National Child Benefit changes are in place? The family is now in the second federal bracket, at the new lower rate of 24 per cent. If you gross up the 24 per cent bracket by the current Manitoba rate, it brings the income tax bite to 35 per cent. Let us add on, as well, the 2 per cent Manitoba surtax and the 2 per cent crop in the value of Manitoba's current tax reduction for low- and modest-income families. This brings us up to 39 per cent.

If we add to that the 33.4 per cent National Child Benefit clawback, the 5 per cent GST credit clawback, the 5 per cent Canada Child Tax Benefit clawback and the 5 per cent for payroll taxes, the grand total is 87 per cent, or 87 cents out of every extra dollar earned.

• (1800)

I admit that this really high rate only applies to a very narrow range of about \$2,600, but if a person is in that range, it just kills them. What is the logic in creating a tax system where Canadians with very modest incomes are losing up to 87 per cent of the additional money they earn by working a few extra hours of overtime? A person might be better off to refuse the money.

Honourable senators, the intent of the Canada Child Tax Benefit is good — to deliver assistance to families that most need it. However, there is a very serious design flaw in the way larger families are treated. Perhaps the government should take a serious look at fixing it. I hope honourable senators agree.

**Hon. Wilfred P. Moore (The Hon. the Acting Speaker):** Honourable senators, it is six o'clock. Is it the wish of the Senate that I not see the clock?

**Hon. Senators:** Agreed.

**Senator Stratton:** Honourable senators, you will have to forgive me. Other senators went very long in their speeches today, and I think they understand that.

Uncompetitive corporate taxes are also a problem, honourable senators. Forty years ago, we had a resource-based economy protected with high tariff walls. If you wanted those resources then you paid high taxes as the price of operating here. If you wanted to sell goods to Canadians, high tariffs would encourage you to manufacture goods in Canada for the Canadian market although Canadians paid for this through higher prices and although export markets were a hard sell. It was an era when money did not instantly flee the country at the click of a mouse.

This is not the 1960s, honourable senators, and tax rates matter more than at any other time in our history. We cannot afford to set our corporate tax rates 7.5 percentage points above the OECD average. This budget reduces that gap by one percentage point with only a promise of further reductions by 2004.



Unfortunately, the world will not stand still and wait for Canada to catch up. Businesses in this country are fighting for markets around the world. Could we imagine sending athletes to the Olympics with equipment from the 1960s? Of course not. Yet that is how this government expects our businesses to face the competition.

Let me turn to Employment Insurance. Honourable senators, "Payroll taxes are a barrier to jobs." If you do not believe me, ask the Minister of Finance. I just quoted his 1994 budget. This year the government expects to collect some \$18 billion in EI premiums but expects to pay out only \$12 billion in benefits. The Employment Insurance actuary tells us that there is enough money in the EI account to cover a full-blown recession. Premiums could easily drop below \$2 and still meet the cost of running the program. For that matter, given that revenues are one-third higher than premiums, then those premiums could be rolled back one-third, to about \$1.60, and still meet program costs this year. Over the course of a year, the difference between a premium of \$1.60 and a premium of \$2.40 equals more than a day and one-half wages for the average worker. For a day and one-half, that worker works for EI and it goes into a surplus.

Yet, honourable senators, another \$7 billion is about to be added to the \$27 billion that is already in the EI account, bringing the cumulative total to \$35 billion by next March 31.

The government tells us that the EI premium rate over the next few years will fall by a dime per year, to reach \$2 in 2004. That is not good enough. This year alone, that other payroll tax we pay, the CPP — or if you live in Quebec, the QPP — went up by 40 cents for every \$100 of earnings. Back when this government was elected, Joe Lunchbucket, earning an average wage, paid \$753 per year in CPP premiums. This year, Joe will pay \$1,330. By the time 2003 rolls around, his premiums will hit \$1,688. That is a tax hike of more than \$900 since 1993. However, for some strange reason, we do not see this in any of the government's tax cut examples. We see the government assuming an EI reduction that may or may not happen, but we do not see any mention of higher CPP premiums.

Honourable senators, in theory, EI premiums are set by the Employment Insurance Commission at a rate that will allow the EI account to meet the cost of paying benefits over the long run. The law requires the commission both to look back at the money in the account and to look ahead at the charges that could be potentially made against that account. It is getting harder and harder for them to keep rates up given the current legal parameters. If the government does not do something soon, it will be forced to cut premiums a lot faster and a lot deeper than it wants to.

There is an clue buried on page 62 of the budget, where says:

The government is closely examining the recommendations of the House of Commons Finance Committee on future premium rate setting.

Honourable senators, what did the Commons committee say? It said that the government should forget about the money already in the EI account when premiums are set because "premium rates well below current levels would be required." The Commons committee went on to say:

The EI rates should be set on the basis of the levels of revenues needed to cover program costs over a business cycle looking forward and not take into account the level of the cumulative surplus or deficit, nor any interest associated with that cumulative position.

In other words, the government is about to say, "Forget about the \$35 billion in the EI account. It does not belong to the people who put it there. We are going to pass a new law so that we can keep the EI premiums high."

There is one further point that needs to be made about this cumulative EI surplus of \$35 billion. To date, the government has repaid a grand total of \$6 billion of the outstanding federal debt. The only way the government was able to reduce the debt was by charging Canadians too much for Employment Insurance. The money that Canadians pay for EI is no longer a premium in any sense of the word. It is a tax, pure and simple.

Honourable senators, let me turn for a moment to health care. Again, I will draw an analogy to the 1960s because it has been that long since Canadians have felt as vulnerable about their health care system as they do today. Forty years before medicare, you felt vulnerable because major medical problems meant financial ruin. Today you feel vulnerable because of the lineups and doctor shortages created by an underfunded health system. If you need a hip replacement, you feel vulnerable because of the one- or two-year wait. If you live in a small town, you feel vulnerable because there is no longer a doctor in town; he or she has retired or has taken the Prime Minister's advice and left the country. Even in many urban areas you feel vulnerable if you need to see a doctor on an ongoing basis, because if your general practitioner leaves town or retires, you may have to wait months to find a doctor who is taking new patients, and that is a real difficulty.

The government is making a lot of noise about the money that this budget put back into the health care system, but suppose for a moment that rather than slash cash transfer payments to the provinces for health, education and social assistance by more than \$6 billion per year, the federal government had simply frozen them at 1993 levels. If that had happened, then even counting the money that has been paid back, transfers would still be about \$3.3 billion more than the federal government plans to send the provinces this year. In fact, if you go year by year and compare the level of cash transfers for health, education and social assistance each year to 1993 levels, and then add it all up, it amounts to a shortfall of some \$35 billion between 1993 and the end of the current planning horizon in 2004 — \$35 billion!

In my province of Manitoba alone, the shortfall amounts to some \$160 million this year compared to 1993. The total cash shortfall for Manitoba, from 1993 to the end of the current planning horizon, 2004, adds up to \$1.7 billion.

• (4810)

I do not see any kind of long-term plan to save health care. I see nothing in the budget that will shrink waiting lists. I see no serious intent on the part of the federal government to sit down and work with the provinces to fix the problem.

Let us look at the longer-term aspects of the fiscal plan. The government does not have a long-term fiscal plan. We are given only two-year forecasts, in spite of the Auditor General's call for longer-term projections to give us a better idea of where the government finances are headed given such long-term pressures as an ageing population.

The government says it will achieve a debt-to-GDP ratio of 50 per cent by 2004, but we are not shown how it plans to get there. The only thing we know with certainty is that at the end of the two-year planning horizon set out in the budget we will be down to 55 per cent. Honourable senators, I think a little bit of math can tell us exactly how the government intends to reach that target in 2004. If the economy grows by 3.4 per cent a year, including inflation, for three years beyond 2001, then the debt-to-GDP ratio would fall to 50 per cent in 2004 even if not a dime of the debt were repaid. It will not fall because the debt is falling.

**The Hon. the Speaker:** Honourable Senator Stratton, I regret interrupting you, but your 15-minute speaking time has expired.

**Senator Stratton:** I require two more minutes.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Stratton:** The promise to achieve a 50 per cent debt-to-GDP ratio is misleading, as it is really a promise to do nothing about the overall debt. It is deplorable because you are doing nothing. Yes, the GDP ratio is dropping to 50 per cent, but you have not done anything. You have paid \$6 billion on it. We will still be at \$577 billion in debt five years from now, and we will still be paying more than \$40 billion a year to service the debt, a debt that will never be repaid.

Perhaps that is why the government is only showing us numbers for two years — it wants to hide the lack of real progress in debt reduction. We need longer-term fiscal forecasts, not just to see what is happening to the debt but to get a better idea of the money going into and out of the government's coffers.

To provide but one example of why we need this information, everyone knows that the money given to Defence in this budget will not pay for the badly needed helicopters and other equipment that the government will, I hope, soon announce. It would be helpful to see the five-year plan so that, when the announcement comes, we can see this in an overall budgetary context.

In closing, honourable senators, I urge the government to reconsider the rather timid pace at which it plans to reduce taxes.

Canadians need significant tax reductions this year, not four years from now. Let us put money back into Canadians' pockets, make Canada a competitive nation, keep Canadians in Canada, help create jobs, and help those students with those ridiculously high debts.

**Senator Robichaud:** With a good Liberal government, we will do that.

On motion of Senator DeWare, debate adjourned.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### MOTION TO AUTHORIZE COMMITTEE TO REVIEW CANADIAN ENVIRONMENTAL PROTECTION ACT WITHDRAWN

On the Order:

Resuming debate on the motion of the Honourable Senator Spivak, seconded by the Honourable Senator Andreychuk:

That the Standing Senate Committee on Energy, the Environment and Natural Resources begin immediately a review of the Canadian Environmental Protection Act as unanimously recommended in the Committee's Seventh Report dated September 8, 1999, and tabled in the Senate the following day.—(*Honourable Senator Kinsella*).

**Hon. Nicholas W. Taylor:** Honourable senators, this arose about a week ago. I believe there was agreement at that time that perhaps it should be removed from the Order Paper. However, it was decided that the matter would remain on the Order Paper until Senator Spivak was here because the leadership on the other side wanted to talk to her. She has been in and out a number of times in the last 10 days. I wish to ask Senator Kinsella whether or not he has obtained her permission to remove this from the Order Paper.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have been deputized by my colleague to act in her stead in this matter, although she is right here. I will return to her the mandate that was requested.

**Senator Taylor:** Honourable senators, while Senator Spivak was away, we debated the motion on the Order Paper dealing with the Standing Senate Committee on Energy, the Environment and Natural Resources. We pointed out a recent news release from the Minister of the Environment and Natural Resources that indeed showed they are doing a study, a review, just as the committee of which Senator Spivak and I are members had asked them to do. It was thought at that time that that being so, perhaps the item should be removed from the Order Paper.

**Hon. Mira Spivak:** Honourable senators, I certainly agree to withdraw the motion.



**The Hon. the Speaker:** It was requested by Honourable Senator Spivak that this motion be withdrawn from the Order Paper? Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Motion withdrawn.

## REVIEW OF ANTI-DRUG POLICY

### MOTION TO FORM SPECIAL SENATE COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Nolin, seconded by the Honourable Senator Cohen:

That a Special Committee of the Senate be appointed to reassess Canada's anti-drug legislation and policies, to carry out a broad consultation of the Canadian public to determine the specific needs of various regions of the country, where social problems associated with the trafficking and use of illegal drugs are more in evidence, to develop proposals to disseminate information about Canada's anti-drug policy and, finally, to make recommendations for an anti-drug strategy developed by and for Canadians under which all levels of government to work closely together to reduce the harm associated with the use of illegal drugs;

That, without being limited in its mandate by the following, the Committee be authorized to:

- review the federal government's policy on illegal drugs in Canada, its effectiveness, and the extent to which it is fairly enforced;
- develop a national harm reduction policy in order to lessen the negative impact of illegal drugs in Canada, and make recommendations regarding the enforcement of this policy, specifically the possibility of focusing on use and abuse of drugs as a social and health problem;
- study harm reduction models adopted by other countries and determine if there is a need to implement them wholly or partially in Canada;
- examine Canada's international role and obligations under United Nations conventions on narcotics and the Universal Declaration of Human Rights and other related treaties in order to determine whether these treaties authorize it to take action other than laying criminal charges and imposing sentences at the international level;
- explore the effects of cannabis on health and examine whether alternative policy on cannabis would lead to increased harm in the short and long term;

- examine the possibility of the government using its regulatory power under the *Contraventions Act* as an additional means of implementing a harm reduction policy, as is done in other jurisdictions;

- examine any other issue respecting Canada's anti-drug policy that the Committee considers appropriate to the completion of its mandate.

That the Special Committee be composed of five Senators and that three members constitute a quorum;

That the Committee have the power to send for persons, papers and records, to examine witnesses, to report from time to time and to print such papers, briefs and evidence from day to day as may be ordered by the Committee;

That the briefs received and testimony heard during consideration of Bill C-8, *An Act respecting the control of certain drugs, their precursors and other substances*, by the Standing Senate Committee on Legal and Constitutional Affairs during the Second Session of the Thirty-fifth Parliament be referred to the Committee;

That the Committee have the power to authorize television, radio and electronic broadcasting, as it deems appropriate, of any or all of its proceedings;

That the Committee be granted leave to sit when the Senate has been adjourned pursuant to subsection 95 (2) of the Senate Rules; and

That the Committee submit its final report not later than three years from the date of its being constituted.—  
(Honourable Senator Hays).

**Hon. Anne C. Cools:** Honourable senators, it had been my intention to speak to this particular motion. I am very mindful of the fact that Senator Nolin is eager to move the motion along and to have the various variables and elements set into motion.

Having said that, honourable senators, I must say that I thank Senator Nolin for his initiative in bringing this matter forward. I should like to place on the record very fairly and squarely that I think that senators' initiatives in the vast area of the study of public welfare are welcome and are to be supported and encouraged.

It had been my intention to bring forward some questions in relation to the subject matter that perhaps Senator Nolin might bear in mind when the committee gets going; however, I can bring those issues forward once the committee is in operation.

Having said that, I am prepared to hand the floor to Senator Nolin so that he may go ahead and move his motion. I thank him for his initiative.

**The Hon. the Speaker:** Honourable senators, I wish to inform the Senate that if the Honourable Senator Nolin speaks now, his speech will have the effect of closing the debate on this motion.

[Translation]

**Hon. Pierre Claude Nolin:** Honourable senators, I move that the motion be adopted.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

[English]

• (1820)

## NATIONAL DEFENCE

MOTION TO ESTABLISH SPECIAL SENATE COMMITTEE TO EXAMINE CONDUCT OF PERSONNEL IN RELATION TO THE SOMALIA DEPLOYMENT AND THE DESTRUCTION OF MEDICAL RECORDS OF PERSONNEL SERVING IN CROATIA—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kinsella:

That a Special Committee of the Senate be appointed to examine and report on two significant matters which involve the conduct of chain of command of the Canadian Forces, both in-theatre and at National Defence Headquarters and its response to operational, decision making and administrative problems encountered during the Somalia deployment to the extent that these matters have not been examined by the Commission of Inquiry into the Deployment of Canadian Forces to Somalia and allegations that Canadian soldiers were exposed to toxic substances in Croatia between 1993 and 1995, and the alleged destruction of medical records of personnel serving in Croatia:

That the Committee in examining these issues may call witnesses from whom it believes it may obtain evidence relevant to these matters including but not limited to:

1. The present Minister of Defence in relation to both matters;
2. Former Ministers of National Defence in relation to both matters;

3. The then Deputy Minister of National Defence in relation to both matters;
4. The then Acting Chief of Staff of the Minister of National Defence in relation to the Somalia occurrence;
5. The then special advisor to the Minister of National Defence (M. Campbell) in relation to the Somalia occurrence;
6. The then special advisor to the Minister of National Defence (J. Dixon) in relation to the Somalia occurrence;
7. The persons occupying the position of Judge Advocate General during the relevant period in relation to the Somalia occurrence;
8. The then Deputy Judge Advocate General (litigation) in relation to the Somalia occurrence; and
9. The then Chief of Defence Staff and Deputy Chief of Defence Staff in relation to both occurrences.

That seven Senators, nominated by the Committee of Selection act as members of the Special Committee, and that three members constitute a quorum;

That the Committee have power to send for persons papers and records, to examine witnesses under oath, to report from time to time and to print such papers and evidence from day to day as may be ordered by the Committee;

That the Committee have power to authorize television and radio broadcasting, as it deems appropriate, of any or all of its proceedings;

That the Committee have the power to engage the services of such counsel and other professional, technical, clerical and other personnel as may be necessary for the purposes of its examination;

That the political parties represented on the Special Committee be granted allocations for expert assistance with the work of the Committee;

That it be empowered to adjourn from place to place within and outside Canada;

That the Committee have the power to sit during sittings and adjournments of the Senate;

That the Committee submit its report not later than one year from the date of it being constituted, provided that, if the Senate is not sitting, the report will be deemed submitted on the day such report is deposited with the Clerk of the Senate.—(Honourable Senator Bryden).



**Hon. John G. Bryden:** Honourable senators, I will speak briefly to this motion which stands in my name. There are a number of reasons that we should not proceed with this motion, including the fact that it has been around for quite a long time in various forms and would need to be reworked.

The most important reason is that I believe that time has passed us by in that many people are no longer readily available to us as witnesses. Many things have happened within the Department of National Defence. Perhaps it would be better to assess how we are doing at a later time.

Therefore, it is not be my intention to support this motion, which I believe is the position of the majority of senators on this side.

On motion of Senator Kinsella, debate adjourned.

## LEGAL AND CONSTITUTIONAL AFFAIRS

MOTION TO AUTHORIZE COMMITTEE TO MEET  
DURING SITTING OF THE SENATE WITHDRAWN

On the Order:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 3:30 p.m. on Wednesday next, April 12, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. Lorna Milne:** Honourable senators, I ask for the consent of the Senate to withdraw this motion.

**The Hon. the Speaker:** Is it agreed, honourable senators, that his motion be withdrawn from the Order Paper?

**Hon. Senators:** Agreed.

Motion withdrawn.

[Translation]

## TRANSPORT AND COMMUNICATIONS

MOTION TO AUTHORIZE COMMITTEE TO MEET  
DURING SITTING OF THE SENATE WITHDRAWN

On the order:

That the Standing Senate Committee on Transport and Communications have power to sit at 5:30 p.m. on Wednesday, April 12, 2000, for its study of Bill S-17, respecting Marine Liability, and to validate certain bylaws and regulations, even though the Senate may then be sitting and that rule 95(4) be suspended in relation thereto.

**Hon. Lise Bacon:** Honourable senators, I seek leave of the Senate to withdraw this motion.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion withdrawn.

[English]

## BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

MOTION TO INSTRUCT COMMITTEE TO AMEND—POINT OF ORDER—DEBATE ADJOURNED TO AWAIT SPEAKER'S RULING

**Hon. John Lynch-Staunton (Leader of the Opposition),** pursuant to notice of April 10, 2000, moved:

That upon committal of Bill C-20 to committee, that the committee be instructed to amend Bill C-20 to rank the Senate of Canada as an equal partner with the House of Commons, and report back accordingly.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I rise on a point of order with respect to this motion. In my duty to draw to the attention of the house a matter which may not be in order.

The question raised by Motion No. 61, moved by Senator Lynch-Staunton, is whether the Senate can mandate a committee to do something that it already has the power to do. According to the authorities I have read, an instruction to a committee must be permissive.

This is analogous to a matter on which His Honour ruled on November 30, 1995, in respect of a motion by Senator Carstairs, then deputy leader of the government, as referenced on page 2391 of the *Debates of the Senate* of that day. In His Honour's ruling, he quoted Speaker Deschatelets' ruling given on March 10, 1971. The quotation refers to Bourinot as follows:

Many precedents are referred to by Bourinot...whereby instructions to committees were declared to be irregular because the committee concerned already had the power to take the action indicated.

Honourable senators, there is a possibility, if not a probability, that the Senate may create a special committee for the purposes of studying Bill C-20. Alternatively, it may be referred to a standing committee or to a Committee of the Whole. Those are three possibilities and, with some imagination, there may be more.

In any event, I believe that this motion is out of order for the reasons stated. I do not wish to dwell on the matter because I think it is well covered in a ruling given fairly recently by His Honour.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I believe that the motion is very much in order in terms of the form and, more important, the matter. This is not at all similar to the case to which my honourable friend has made reference. This is the first time in the history of this chamber that there is a piece of legislation before us which challenges the authority and the consent of this chamber. This is a very special piece of legislation, and this motion addresses this unprecedented attack, which will diminish the Senate of Canada.

In the debate to date at second reading of Bill C-20, honourable senators from both sides have indicated their serious concern with this legislative proposal to lessen the Senate of Canada during our watch. We must place a clear direction before the committee, be it Committee of the Whole, a special committee, or the Standing Senate Committee on Legal and Constitutional Affairs. Given the very special and unique circumstance with which we are faced in this chamber, we must be able to give that instruction to whatever committee studies this bill to address this serious threat to the Senate of Canada.

In examining whether this motion is in order, as I believe it to be, I believe that His Honour must consider whether the bill itself is *intra vires* to the Senate. I argue that it is *ultra vires* to the Senate; that we do not have the authority to examine a piece of legislation that has as its objective the breakup of Canada. A bill such as this has never before been introduced into Parliament. I do not think there is a parliamentary basis upon which it is properly before this house.

Consequently, His Honour may want to consider whether the bill is *intra vires*. Of course, if he finds that it is *ultra vires*, he will not have to worry about the first part.

**Senator Lynch-Staunton:** Honourable senators, I should like to draw your attention to paragraph 896 in *Beauchesne's Parliamentary Rules & Forms*, which reads:

(1) When the motion to concur is moved, the House may refer the report back to the committee for further consideration or with instructions to amend it in any respect.

Some will say that the bill has yet to be referred. The motion takes that into consideration by saying that once it is referred, the house will give instruction.

• (1830)

I think it is quite appropriate both to give an instruction and to order the committee to report back accordingly. There might be some quarrel as to the timing, but I do not think there is quarrel as to the instruction. The timing factor was taken into consideration when it says "upon committal of Bill C-20." If it is not committed, there are no instructions; once it is committed,

then the instruction, depending on the decision of this house, will or will not be passed on.

**Hon. Nicholas W. Taylor:** Honourable senators, I wish to make a short comment.

Page 614 of *Erskine May* — and His Honour will probably want to go into this in more detail — concerning the amendment of an order of reference and instructions respecting committees in the House of Lords and other Parliament goes into a fair amount of detail on what the chamber can do in altering instructions, changing the original order, and limiting a committee's powers or expanding powers. They are all found in the second paragraph of that page. I am sure His Honour would like to read that paragraph.

**Senator Hays:** The only new issue that has arisen is whether the bill is *ultra vires* the Senate. That is an unusual characterization. We hear it in the constitutional sense, in terms of the orders of government, either federal or provincial, but I have not heard it before in the context of Parliament.

The bill is, I would concede, not the run-of-the-mill type that we ordinarily receive here from the government. However, I would put it to His Honour and to honourable senators that it is not outside of the jurisdiction of Parliament, including this House of Parliament, obviously, to deal with a bill such as the one before us in Bill C-20. I wanted to clarify that, if it was a new concern, in addition to the arguments that we can only instruct permissibly to a committee and not mandate a committee to do something it has jurisdiction to do in any event.

**Hon. Anne C. Cools:** Honourable senators, this is unexpected for me. I find the matter to be quite interesting and to be one that is worthy of considerable and important debate. His Honour is being asked to decide on a point of order that is an important question of substance, not so much a question of order.

I should like to begin by stating that the Speaker is supposed to be the first and strongest supporter of the powers and privileges of the Senate. The second strongest supporter is supposed to be that minister of the Crown who, in this chamber, is designated as the Leader of the Government in the Senate.

The motion says precisely that "the committee be instructed to amend Bill C-20 to rank the Senate of Canada as an equal partner with the House of Commons, and report back accordingly." What we have before us is a point of order about Bill C-20. An important aspect of this motion and the question that the Speaker will need to answer — and it will be interesting to see how this is done — is whether or not Bill C-20 itself ranks the Senate "as an equal partner with the House of Commons." The essential question that is being brought forward in this motion is whether or not the Senate of Canada is an equal partner with the House. While this motion has not yet been spoken to, in essence, it is anticipating that the committee will find that Bill C-20 has deemed that the Senate is not an equal partner. This motion is asking the Senate to remedy that defect or that particular problem.



Honourable senators, I find this all very interesting because, on the first level, an instruction to a committee is always in order. In respect of instructions to committee at the particular stage which is second reading, that is also in order. The question, then, that is before His Honour is whether or not it is in order for a senator to suggest that Bill C-20 is problematic because it inherently claims that the Senate of Canada is not an equal partner in the Constitution of Canada.

Honourable senators, when he takes this matter into consideration, I would ask His Honour to be strong and to differentiate between that which is out of order and that which is defective. There are motions that are defective, motions that are insufficient and motions that are inadequate, but it is entirely possible for insufficient, defective and inadequate motions to be quite in order. I would submit to His Honour that if he were to rule every inadequate, defective or insufficient motion in this place out of order, he would be ruling a battery of motions out of order. I put forward that distinction before honourable senators, namely, the difference between "defective" and "in order."

The next point that I should like to make is on the question of Bill C-20 and whether or not it is properly before us. I find this fascinating because the Supreme Court of Canada began by telling us that there is no law on the question of a legal right to recession. If there is no law on the question of a legal right to recession, then where does the law come from on which to found Bill C-20? That is very interesting indeed, honourable senators, because Bill C-20 is proposing to alienate the Senate from the Parliament of Canada. This is a most interesting process. I should like to put on the record section 17 of the Constitution Act, 1867, which reads:

17. There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and House of Commons.

Obviously, the Senate is indivisible from the Parliament of Canada. Section 18 of the British North America Act, 1867, reads:

18. The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.

The Constitution Act says very clearly that the Senate of Canada is a coordinate institution alongside the House of Commons. The question then becomes: How can it be that a

simple bill of the House of Commons can abrogate the powers conferred by section 18?

**The Hon. the Speaker:** Honourable Senator Cools, I hesitate to interrupt you, but you are getting into the substance of the bill and not the point of order that is currently before the Senate.

**Senator Cools:** I did not think I was. I would be happy to stand corrected if I were, but the substance of the motion that is being asked to be ruled out of order is that "the committee be instructed to amend Bill C-20 to rank the Senate as an equal partner with the House of Commons..."

• (1840)

What I am attempting to show very clearly is that if that motion is defective in some form or fashion, it is still in order and should be properly determined by debate within this chamber. In other words, the real question is, how are these conclusions reached? I would submit to honourable senators that these conclusions are best reached at the end of debate as an opinion of the chamber itself.

I will have much to say about the substance of the bill when we get there. It is very clear that we have overstretched our reach just a tad and perhaps the debate should come on as to whether Bill C-20 is consonant with the law of Parliament. In the long run, the law of Parliament will fuel any decision that His Honour must make. The question is whether this motion is consonant with those rules by which this Senate chamber ought to guide itself. In other words, is the motion consonant with the interests of the Senate and with the constitutional role that was imposed upon honourable senators in the Senate?

As I said before, honourable senators, I am not speaking on the substantial matter of Bill C-20 itself, but Senator Lynch-Staunton has raised a very important question which is itself the propriety of the Senate's extinction or alienation from Bill C-20.

**Senator Lynch-Staunton:** I was not going to rise, honourable senators, except I heard Senator Taylor quote from Erskine May regarding House of Lord procedures. I should like to go right to the source and quote from the *Companion to the Standing Orders and Guide to the Proceedings of the House of Lords*, the 1994 edition, page 116, under the heading "Instructions". It read:

Instructions to any committee on a bill may be moved after the Second Reading. Instructions may be either permissive, that is, enabling the committee to do something that it could not otherwise do, such as divide the bill into two; or mandatory, that is, prescribing a certain course of action, such as the omission of certain clauses, or the consideration of clauses and schedules in an order other than that of the bill. Instructions to extend the scope of bills are undesirable.

But not disallowed.

The argument, from our point of view, is that we are allowed to instruct the committee to take a mandatory course of action. Where I might agree that we are in a grey area is on the timing. The Lords say after second reading. Beauchesne is not as specific but seems to imply waiting until instructions are sent to committee before proposing such a motion. I would have no objection to that at all, whether we do it now or later. However, I want clarity on — if I can use that word — our right to do so.

**Senator Hays:** I have one other comment, based on the interventions of Senators Cools and Kinsella.

My view is that His Honour should be discouraged from ruling on something that is not before him in terms of the motion we are talking about — in other words, the orderliness of the bill itself.

[Translation]

**Hon. Pierre Claude Nolin:** Honourable senators, this time the Speaker's decision will be an easy one, and I will tell you why.

If he decides that Senator Lynch-Staunton's amendment is not in order, he is ignoring the Constitution of Canada. I am sure that that is not what he wishes to do.

However, if Senator Lynch-Staunton's amendment were to the effect that the Senate is not an equal partner of the House of Commons, I am sure that that would not be to the Speaker's liking either.

It is up to the Speaker to uphold section 17 of the Constitution which says, under the heading "Legislative Power", that there shall be one Parliament for Canada, consisting of the Queen, an upper house styled the Senate, and the House of Commons. It will therefore be a very easy decision for the Speaker.

[English]

**The Hon. the Speaker:** If no other honourable senator wishes to speak, I thank all honourable senators who have participated in this debate. It is always interesting to have previous decisions of the Speaker brought into the mix. At times, it is somewhat disconcerting. However, I shall take the whole matter under advisement.

## NISGA'A FINAL AGREEMENT BILL

### MOTION FOR DISPOSAL OF THIRD READING

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, pursuant to rule 38, I move:

That, in relation to Bill C-9, to give effect to the Nisga'a Final Agreement, no later than 3:15 p.m. Thursday,

April 13, 2000, any proceedings before the Senate shall be interrupted and all questions necessary to dispose of third reading of the Bill shall be put forthwith without further debate or amendment, and that any votes on any of those questions be not further deferred; and

That if a standing vote is requested, the bells to call in the Senators be sounded for fifteen minutes, so that the vote takes place at 3:30 p.m.

**The Hon. the Speaker:** Honourable senators, as was indicated earlier, this was an agreement between the Honourable Senator Hays and the Honourable Senator Kinsella. Does the Honourable Senator Kinsella second the motion?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I do, honourable senators.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

## ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until Wednesday, April 12, 2000, at 1:30 p.m.;

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate;

That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, April 12, 2000, at 1:30 p.m.



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CANADA

# Debates of the Senate

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OFFICIAL REPORT  
(HANSARD)

Wednesday, April 12, 2000

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTIONS

**Hon. Gérard-A. Beaudoin:** Honourable senators, I wish to point out an error in my speech last Monday, as reported on page 1067, where I said in English:

“This may be our finest hour.”

This is exactly what I wished to say, but it was translated in French as “nous vivons peut-être notre dernière heure”. Obviously they took it as “final” instead of “finest”.

I suggest that the French translation read as follows: “Peut-être connaissons-nous en ce moment nos plus belles heures.”

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**Hon. Roch Bolduc:** Honourable senators, on Monday, during my speech on Bill C-20, at second reading stage, I mentioned the chief justice of the U.S. Supreme Court, Mr. Warren. I was referring to Earl Warren, who served in that capacity in the early 1960s. In Hansard I note that the name appeared as Warren E. Burger. Mr. Justice Warren E. Burger served as chief justice of the U.S. Supreme Court in the 1980s.



## THE SENATE

Wednesday, April 12, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

[Translation]

### SENATORS' STATEMENTS

#### JUSTICE

##### OFFICIAL LANGUAGES IN CRIMINAL COURTS

**Hon. Jean-Robert Gauthier:** Honourable senators, the Parliament of Canada needs to amend the Contraventions Act in order to protect language rights. The Contraventions Act allows substitution of tickets for the summary proceedings set out in the Criminal Code.

This statute was amended in 1996 in order to allow the criminal process in each province and territory to apply to federal offences. The modified legislation authorizes the Minister of Justice to reach agreements with the provincial, municipal or local authorities on procedures for the processing of tickets.

In December 1997, the Association des juristes d'expression française de l'Ontario drew to the attention of the Commissioner of Official Languages the agreement dated June 9, 1997 between the Government of Canada and the City of Mississauga. This agreement dealt with illegal parking at Lester B. Pearson International Airport, in Mississauga. It set out the process for parking tickets and the payment of applicable fines, including the procedure applicable to legal proceedings relating to these tickets and fines.

There was no reference whatsoever in this agreement to language-related rights or obligations. As a result of this agreement, individuals receiving parking tickets were deprived of the language rights guaranteed by the Criminal Code.

Having analyzed the pertinent provisions of the Contraventions Act, the Official Languages Act, the agreement and the documentation provided by the Department of Justice, the Commissioner of Official Languages concluded that the complaint by the Association des juristes d'expression française de l'Ontario was justified. The Commissioner recommended that the Department of Justice:

1. take the necessary steps to incorporate in the Contraventions Act, as a minimum, the same language rights as:
  - a) those recognized in the Criminal Code (to be exercised before the courts);
  - b) those set out in Part IV of the Official Languages Act (to be exercised outside the courts);
2. and consequently ensure that the agreements reached under the Contraventions Act guarantee that the provinces, territories and municipalities will respect the rights set out in recommendation 1;
3. consult the official language minority community and the associations of jurists before undertaking any project, concluding any agreement, or carrying out any legislative amendments to the contraventions system liable to have an impact on the use of French and of English;
4. re-examine any agreement ratified to date, in order to ensure that there is uniform protection of the language rights referred to in recommendation 1.

[English]

• (1340)

### LETTER IN SUPPORT OF THE HONOURABLE RON GHITTER

**Hon. Mira Spivak:** Honourable senators, I used to believe in the separation of church and state and in rendering unto Caesar the things that are Caesar's and unto God the things that are God's, but I am not so sure any more. I refer to the case against former senator Ronald Ghitter where justice has been served but where, I think, there was also some divine intervention if not *deus ex machina*.

I should like to read into the record a letter that I wrote to one of the defendants in the action, namely Ezra Levant, the legislative assistant to Mr. Preston Manning. This letter was written on October 6, 1998, and reads as follows:

Dear Mr. Levant:

Prior to attending synagogue on the most holy day in the Jewish calendar, Yom Kippour, I caught your blasphemous, intemperate, patently politically inflammatory, not to mention defamatory, comments about Senator Ghitter, on television.

The absurdity of your attack is most evident when one looks at Senator Ghitter's charitable, professional, political and elective service to his community. He has an enviable record as a human rights advocate, as a lawyer, as a former member of the provincial government in Alberta, and as an active supporter of outstanding leaders in Alberta.

On the other hand, the source of the politically motivated criticism of him — your humble self — has an unenviable brief career path as chief mouth piece to Canada's Ken Starr clone. I use that evocative description because of the indefensible manner in which the party you serve has chosen to target individual senators and their personal lives.

I know that this is just a temporary lapse, an overzealous reaction, and that you will go on to serious constructive criticism. So I am sure also that the God of the Old Testament, Yahweh, recognizing the callow youthfulness of your action, will refrain from smiting you.

But he did not refrain.

**Hon. Senators:** Hear, hear!

## IRAN

### ARREST OF THIRTEEN JEWISH MEN

**Hon. Erminie J. Cohen:** Honourable senators, in a little more serious vein, over a year ago, the authorities in Iran arrested 13 Jewish men on charges of espionage. They included the Chief Rabbi of Shiraz and other religious leaders. They alleged that the 13 were spies for Israel and the United States, charges immediately and vehemently denied by both these governments. Their trial is scheduled to begin on Thursday, April 13, which is tomorrow. Although three have been released on bail recently, the remaining 10 have now languished in prison for a year. As a humanitarian gesture, the local Jewish community in Shiraz has asked for a brief postponement of the trial and a request that the 10 still incarcerated be released on bail or on their own recognizance to spend at least Passover with their families.

This major festival on the Jewish calendar, which begins next Wednesday, ironically celebrates the ancient redemption of the Jewish slaves from Egypt and exalts freedom, both physical and religious. The special ceremony marking the first two nights commands the participants to imagine that they, too, were slaves in Egypt so that they might appreciate even more our precious gift of liberty.

Religious freedom is very much on our minds as we advocate on behalf of the 13 Jews in Iran. They have the right to due process and a fair trial according to Article 14 of the International Covenant on Civil and Political Rights. Should their trial proceed as planned, there are at least two major areas of concern. As of now, international observers will be barred from the proceedings. It is also still not clear that the accused have been granted the right to choose their own legal representation and that such counsel has had adequate time to prepare their defence.

We call upon the government of Iran to ensure that the accused have access to legal counsel of their own choosing, that these lawyers have sufficient time to prepare a full defence, and that international monitors be allowed into the proceedings to ensure that they are open and transparent and conform to international standards of justice. These elements are fundamental to any fair trial and inherent to the dignity of human beings.

Honourable senators, we call upon Iranian authorities to do what is just and right.

[Translation]

## ROUTINE PROCEEDINGS

### MODERNIZATION OF BENEFITS AND OBLIGATIONS BILL

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day of Friday, April 14, 2000.

[English]

### HERITAGE LIGHTHOUSES PROTECTION BILL

#### FIRST READING

**Hon. J. Michael Forrestall:** Honourable senators, I have the honour to present Bill S-21, to protect heritage lighthouses.

Honourable senators will appreciate the role that Senator Pat Carney played in the development of this bill.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Forrestall, bill placed on the Orders of the Day for second reading on Tuesday, May 2, 2000.

### CANADIAN NATO PARLIAMENTARY ASSOCIATION

#### JOINT MEETINGS OF DEFENCE AND SECURITY, ECONOMIC AND POLITICAL COMMITTEES HELD IN BRUSSELS AND PARIS— REPORT OF CANADIAN DELEGATION TABLED

**Hon. Bill Rompkey:** Honourable senators, I have the honour to table the fifth report of the Canadian NATO Parliamentary Association which represented Canada at the Joint Meeting of the Defence and Security Committee, the Economic Committee and the Political Committee held in Brussels and Paris, February 20 to 23, 2000.



## QUESTION PERIOD

### JUSTICE

#### FIREARMS REGISTRATION FORM— NATURE OF PERSONAL INFORMATION REQUESTED

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate and it deals with gun control. Most honourable senators in this chamber would agree that some form of gun control is necessary in order to afford protection to all Canadians, but I received a letter and a note from a businessman in Halifax recently that contained the firearms possession and/or registration form. The gentleman asked me to make an inquiry whether some of the questions on the form were not an invasion of personal privacy. The form requests information on personal history and information on the use of firearms over the past five years. At the end, it asks the following questions, and these represent the nature of my question to the Leader of the Government.

During the past two years have you experienced a divorce, separation or breakdown of a significant relationship; a major failure in school; loss of jobs or bankruptcy, and if the answer to any of the above is yes, give the details below.

• (1350)

My question to the honourable leader is the following: Is this the kind of personal information that is required before a person is permitted to register for a firearm in Canada?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I wish to thank the honourable senator for raising that issue. I am not familiar with the details of the application form. However, the process does involve certain work by the Royal Canadian Mounted Police, among others, to ensure that the individual who is applying for the certificate is not a risk in any way.

I can inquire as to whether these questions are routinely included on the application forms, and if they are, what is the rationale for those questions.

**Senator Oliver:** As a supplementary question, I direct the leader again to the language on this form, which I have with me. It asks: "Have you ever experienced a major failure in school?"

What is "a major failure in school"? If you got an "F" in your Latin exam in grade five, does that disqualify you later on from having a firearm?

**Senator Boudreau:** No, I doubt that it does. I can say that, not being an expert in the area.

**Senator Meighen:** Is the honourable senator sure about that?

**Senator Boudreau:** Without consulting the Minister of Justice, I will wager that that would not disqualify you.

There is a serious aspect to these questions. For example, the question of domestic violence is an important question. The incidence in this country of domestic violence makes it a significant issue and one that is related to the question of gun

control. One tends to believe that the form, in asking for details, is doing so to make a judgment as to the risk assessment in a specific instance. I cannot imagine that getting an "F" in Latin, using the example given by the honourable senator, would qualify one as a risk.

**Senator Graham:** Particularly in grade five.

**Senator Boudreau:** Yes, particularly in grade five, as stated by my honourable colleague.

**Senator Oliver:** Does the honourable leader know if the same types of questions are asked of all members of police forces in Canada?

**Senator Nolin:** Just say no.

**Senator Boudreau:** Honourable senators, again, I have to plead ignorance on that issue. I do not know what questions are asked on the application for the various police forces. I should hope there would be some discussion of the individual's background before being hired. Whether or not there are regular updates required, for example, of any educational failures, I am not sure. One should err on the side of prudence, particularly where there is potential for domestic violence. I should hope that is the purpose of the questions.

**Hon. Gerald J. Comeau:** Honourable senators, I do not think the minister has responded to the question of why a divorce or a breakup of marriage would be asked on such a form? It is ridiculous that such a question should be asked on a Government of Canada form.

**Senator Boudreau:** Honourable senators, the party may have had an emotionally-charged divorce situation. There may have been, for example, a history of violence. However, if the form simply asks if such an event has taken place and asks for details, one is not automatically disqualified. It is worth asking the question in order to ensure that there is no immediate danger of domestic violence.

**Senator Comeau:** Should the question not then be something to the effect, "Have you been arrested for any incidents of domestic violence?" and not, "Have you been divorced?" It now appears as if it is the position of the Government of Canada that people who have undergone a divorce are prone to being violent or dangerous.

**Senator Boudreau:** In this case, I am sure it is a situation where those involved in preparing the forms wanted to err on the side of caution and in so doing have attempted to create a description of the surrounding circumstances. There is no question there are incidents involving domestic violence when parties are getting divorced. It is an unfortunate fact. I am sure that an answer in the affirmative does not automatically disqualify anyone from applying for a firearm. In this situation I believe the government wants to err on the side of caution.

### RESEARCH AND DEVELOPMENT

#### AUDITOR GENERAL'S REPORT—COMMENT ON RATIO OF R&D TO GROSS DOMESTIC PRODUCT

**Hon. Roch Bolduc:** Honourable senators, regarding the tax credit program, the Auditor General asked a very interesting

question, to which I hope the Government Leader can provide an answer. Pointing out that Canada has the most generous tax incentives for research and development in the G-7, he asks, "Why among the G-7 countries does Canada have the second lowest ratio of total spending on research and development to gross domestic product?"

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have not read that particular section of the Auditor General's report, which was tabled yesterday afternoon in the House of Commons. However, this government has initiated major efforts to increase the amount of research and development spending. In each of the last two budgets, the government has committed \$900 million under the Canada Foundation for Innovation or CFI program, with the requirement that the funds be matched. That is \$1.8 billion in the last two years, which represents a substantial effort in the area of research and development. There is no question that Canada wants and needs to do more. The two measures in the last two budgets are a significant part of that.

I might add that the announcement of the Chairs of Excellence for universities will allow Canada to develop an additional capacity for research.

**Senator Kinsella:** How many for Nova Scotia?

**Senator Boudreau:** That program is one of the most important and significant programs that we have seen recently. In the last two budgets we have seen \$1.8 billion in the CFI program and another \$900 million for the Chairs of Excellence, both huge government commitments to research and development.

## THE ECONOMY

### EFFECT OF TAX REGIME AND MIGRATION OF WORKERS TO UNITED STATES

**Hon. Roch Bolduc:** Honourable senators, could part of the problem lie in the fact that we have a tax regime that discourages businesses from locating in Canada and that the Prime Minister refuses to acknowledge that we have a brain drain?

[Translation]

Last year, the Prime Minister said that there was no brain drain. The Americans have usually been issuing some 30,000 temporary work permits annually. Last year, they issued 98,000 for Canadians.

Three quarters of the Department of Computer Science graduates, at the University of Waterloo, are now in Seattle.

[English]

**Senator Lynch-Staunton:** Shame! We cannot keep them here?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, one of the results of a global economy is a mobile workforce. There are surprisingly some Canadians moving permanently, others temporarily, to the United States. On the other hand, there are some jobs coming from the south to the north.

• (1400)

**Senator Stratton:** Did you catch the CBC Sunday night?

**Senator Boudreau:** I was happy, as a matter of fact, to be involved in an announcement just last week, where the Government of Canada was instrumental in bringing 900 jobs to Sydney, Nova Scotia. Those jobs were previously located in South Carolina. I thought that was a wonderful initiative.

**Senator Lynch-Staunton:** High-tech jobs — minimum wage!

[Translation]

**Senator Bolduc:** Honourable senators, the minister reminds me of Mr. Duplessis, in Quebec. At one time, Mr. Lapalme quoted some statistics on economic, investment and employment trends. Mr. Duplessis rose in the National Assembly and told him that, the previous day, he had eliminated another paper machine in Trois-Rivières. In his reply, he referred to one case. We are talking about trends.

The minister said that the government would invest funds in the universities. Do honourable senators realize what will happen? The academics will eventually discover things after doing all kinds of research and then they will develop their findings in the United States. This is Canada's tragic story. Many inventors discover things, they have a great deal of imagination, but they end up moving to the United States to set up their own businesses, because taxes in Canada are too high.

[English]

**Senator Boudreau:** Honourable senators, I have no difficulty in saying that the tax regime that exists in Canada creates a potential problem. However, it did not just fall from heaven. It is a result of the huge deficits that were run up and the money that was required over the years to service those deficits.

**Some Hon. Senators:** Shame!

**Senator Lynch-Staunton:** That is Senator Graham's script. Come on now, read your own script.

**Senator Meighen:** Let Senator Graham do that.



**Senator Boudreau:** Where would the money come from, if not from the taxpayers of Canada? That is where the money came from. If the Honourable Senator Bolduc wants to talk about trends and look down the road, he will see long-term measures that are the result of balancing the budget four years in a row.

**Senator Lynch-Staunton:** Thanks to free trade and the GST!

**Senator Boudreau:** Therefore, in this year's budget we were able to see a reduction in the capital gains tax, which is important to business. We were able to see provisions that allow businesses and individuals to roll over \$500,000 into newly created businesses without attracting capital gains tax. We were able to see the business tax lowered. All of those things did not occur by accident — they occurred because of good fiscal management.

**Senator Meighen:** You have free trade and the GST.

[Translation]

**Senator Bolduc:** Honourable senators, the minister says they are taking small steps. This is what I said on March 24. They are taking small steps and they are working on something that will take five years. In five years we will be dead! This is urgent; we must act now.

[English]

**Senator Boudreau:** In the past three years, we have seen dramatic changes and dramatic improvements in virtually every area. It is a staged program, and a responsible way to make changes. We will not cut taxes on borrowed money, as Mr. Harris does in Ontario. That is not the way to cut taxes. A government cuts taxes by putting its fiscal house in order. We have done that and we will continue to reduce taxes, Employment Insurance premiums, capital gains tax, and all those things in a staged, responsible way.

**Senator Lynch-Staunton:** Ontario booms. Ontario drives the Canadian economy. Shame!

## THE CABINET

### POSSIBILITY OF RESOLUTION TO RECALL PRIME MINISTER FROM MIDDLE EAST

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a question for the Leader of the Government in the Senate. Would the minister be able to confirm or deny that a resolution has been passed by the cabinet to recall the Prime Minister from the Middle East?

**Senator Forrestall:** Leave him there!

**An Hon. Senator:** Joe was there!

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am sure the Prime Minister appreciates

the interest that his trip has generated among the opposition benches.

**Senator Taylor:** At least he did not lose his luggage.

**An Hon. Senator:** He did not have any.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, my understanding is that the cabinet was seized with a resolution but that Mr. Martin and others voted against it.

The Prime Minister has caused no end of embarrassment to this country in the last few days in the Middle East. Obviously he has been poorly briefed and poorly informed. This has caused many problems for the parties who, for decades, have been trying to come to a resolution. I will not dwell on that, however.

## FOREIGN AFFAIRS

### VISIT BY PRIME MINISTER TO MIDDLE EAST— STATEMENT ON NUMBER OF LAKES IN CANADA

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I wish to ask the Leader of the Government in the Senate about the Prime Minister's knowledge of geography. According to the *National Post* today — and I heard it on the television last night, so the quotation is accurate — the Prime Minister said:

For a Canadian we have 30 million lakes so we don't see it in the same perspective but I can understand the need for Israel to keep the only lake they got.

Forget the grammar and the ignorance. I should like to know if the Leader of the Government in the Senate, who is so anxious to run with the Prime Minister in the next election somewhere in Nova Scotia, could identify the 28 million lakes which have yet to be identified by the sources I have consulted, thanks to the Library of Parliament.

The Canada Information Office says that there are 2 million lakes in Canada. The *Canadian Encyclopaedia* — and this is thanks to the Library of Parliament, whose research facilities are extraordinary — says that recent surveys suggest there may be as many as 2 million lakes in Canada. A quiz book put out by *Canadian Geographic* poses this question: How many lakes are there in Canada? The answer is — my final answer — that it is estimated that Canada has 2 million lakes.

The Prime Minister told his international audience that there were 30 million lakes in Canada. I should like the Leader of the Government in the Senate to identify the 28 million missing lakes.

**Senator Forrestall:** Are they all ponds in Newfoundland?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have not felt this much pressure since grade 5 geography class.

I can only suggest to the Honourable Leader of the Opposition that the Prime Minister, being in the Holy Land, was seized of the spirit of the country and was speaking to some degree in parables.

VISIT BY PRIME MINISTER TO MIDDLE EAST—  
SOVEREIGNTY OF SEA OF GALILEE—GOVERNMENT POLICY

**Hon. Lowell Murray:** Honourable senators, given the Prime Minister's statement, with what country does sovereignty over the Sea of Galilee lie in the view of the Government of Canada?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, in the reports I have read, the Prime Minister made it clear that it is the position of the government that these are matters of negotiation between the parties. It is the parties that will resolve the myriad of issues that exist between them. This will be one of those issues. At this point, Canada supports that process and will support the results. With respect to the Sea of Galilee and all of the other issues, we will support the conclusions of that peace process.

**Senator Murray:** I appreciate that there may be negotiations at some point on the issue, but my question was and is: With what country does sovereignty lie in the view of the government? I believe that is a proper question to ask following the statement of the Prime Minister. What sovereignty does the Government of Canada recognize over the Sea of Galilee?

**Senator Boudreau:** Honourable senators, the Prime Minister, as I understood the matter — and I have not read the reports in detail — expressed an understanding of Israel's wish to resolve that issue in their favour. He understood, I think, why that might be the case. However, the Prime Minister also went on to say that we would support the peace negotiations. I do not know that it is helpful for Canada or for any country to issue formal statements, either here or anywhere, that indicate the government's position on those issues.

• (1410)

I do not think that is what the Prime Minister did or what he intended to do.

**Hon. A. Raynell Andreychuk:** Honourable senators, is this another mistake by the Prime Minister on this trip?

**Senator Boudreau:** No, honourable senators. I believe that the Prime Minister expressed an understanding of how people felt. He went on to say that he understood how the matter would be resolved and that we would support that resolution.

## ORDERS OF THE DAY

### NISGA'A FINAL AGREEMENT BILL

THIRD READING—MOTION IN AMENDMENT—  
DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement;

And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence.

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to make a few preliminary comments before proceeding with my main remarks on Bill C-9.

First, Bill C-9 and the accompanying agreement is the most significant piece of legislation to be brought before the Senate in my seven years in this chamber. Second, I wholly and enthusiastically support the concept of a negotiated settlement for the aboriginal peoples with the Government of Canada. Next, I believe the issue of aboriginal inherent rights and land claims is a most complex area. I therefore commend the efforts of the Royal Commission on Aboriginal Peoples which furthered my understanding of the varying perspectives, issues and actions that need to be taken.

I believe that the royal commission report is mandatory reading for all senators if they wish to fully understand the implications of Bill C-9. That report lays out a blueprint for restructuring the relationship between Canada and aboriginal peoples and a road map for renewal in Volume 5 entitled, "Renewal: A Twenty-Year Commitment".

At the outset, I wish to commend the people of the Nisga'a nation for their tenacity, perseverance, and good faith in negotiating the Nisga'a agreement. No doubt, as history will prove, and as the royal commission recommended, compromises have to be made on all sides. I believe that it is not the responsibility of this chamber to determine in any way whether the Nisga'a agreement complies with the rules, customs, and laws of the Nisga'a nation. Rather, the concern in Bill C-9 is whether the federal government is exercising its jurisdiction appropriately on behalf of the people of Canada. In that I include all Canadians and take into account the special fiduciary relationship with aboriginal peoples. In other words, while the federal government had the responsibility of negotiating the Nisga'a agreement, it is also accountable to ensure that it complies with the Constitution of Canada.



Honourable senators, that is our role and responsibility as well. In addition to ensuring that Bill C-9 and the accompanying agreement are constitutional, we must ensure that we have discharged our fiduciary responsibilities. Further, the Senate has the responsibility to ensure that minority rights are upheld.

Therefore, I found extremely puzzling certain statements made in a recent article in the *National Post* by Neil Seeman. Commenting about a second lawsuit on the Nisga'a agreement, he indicates that Patrick Monahan, a constitutional law scholar at Osgoode Hall Law School in Toronto, predicted that the British Columbia courts would bow to Parliament. He quoted Professor Monahan as saying:

The treaty has been passed by the House of Commons and has already been ratified by the B.C. legislature. I strongly doubt the courts will interfere in this process.

I do not know whether Professor Monahan was simply providing legal advice to the Government of Canada, or legal and policy advice, but these comments dismissing the role of the Senate are indeed troubling, for, as I understand Professor Monahan's argument in support of the constitutionality of Bill C-9, he seems not to have put much weight on the intent of the legislators at the time of the passing of sections 35(1) and (3) of the Constitution. Yet, he invites us to accept the proposition that the legislative intent behind Bill C-9 is sufficient for the courts not to interfere with the process. He also discounts the role of the Senate. I find this troubling and inconsistent.

Finally, we have heard repeatedly in this chamber that it is necessary to pass this bill because it is the right thing to do morally; that it is a humanitarian act. I find that to be paternalistic. I say no. I believe that inherent rights and land claims are based on the rule of law. The claims of the aboriginal peoples are grounded in the rule of law, as must be the answers to such claims.

I wish to speak in support of the amendment proposed by Senator St. Germain. First and foremost, it is important to reiterate that I do not question the value of negotiated settlements. In a democracy that prides itself in diversity, it is the most civilized and productive way to achieve consensus of governance. Equally important is the rule of law, and it must be maintained.

I subscribe wholly to Mr. Willard Estey's remarks before the Committee on Aboriginal Peoples. He stated:

First, we must remember that the Constitution is the real wall between chaos and civilized progress. No community on the face of the earth has ever made it into the higher standard of living to which we all aspire without a set of rules, which are called a constitution.

He later stated:

You need rules to keep our impulses subdued.

The real issue is that, if we accept the right of self-government within the framework of Canada, does the Nisga'a agreement and the enabling legislation find its legitimacy in section 35 of the Constitution or, to accomplish the same, is a constitutional amendment necessary?

It is the responsibility of each and every senator to ensure that the legislation passes the test of constitutionality.

I do not hold myself out as a constitutional lawyer, nor do I even rely on my legal ability with some experience in constitutional law. Rather, I ask you to look at the evidence presented to the Committee on Aboriginal Peoples. There were basically two approaches presented to the committee. The first, presented by Mr. Estey and two former attorneys general, among others, can be summarized by Mr. Estey's statement, after reviewing our history:

Now we are facing something new. This is the third plateau — section 35 in the Canadian Constitution, 1982. It is high time we activated that section, and we all welcome this process in the Senate as one important lifeline, going back to the community, as to what section 35 is all about. I thank the committee, and particularly the Chairman, for allowing us that lifeline.

• (1420)

Mr. Estey stated further:

There is 100 per cent sovereignty contained in the two sections.

He is referring to sections 91 and 92.

Section 35 causes us to weld together the original settlers, who now manage affairs through section 91 and 92, and the aboriginals, who have been ignored for a century and a half. Their rights must now be sifted out of sections 91 and 92.

We suggest that the details of the bill, of the agreement appended to it, and of the studies that back it all up, must be viewed from the simple reality that we are trying to put muscle into section 35 without destroying the power in sections 91 and 92, except to the extent it is found necessary. When it is found necessary, we have to amend the act. That is no big deal.

He concludes in paragraph 15 of his written submission:

From the foregoing it is clear that the Agreement provides for the transfer from the governments of Canada and British Columbia to the Nisga'a nation very significant sovereign powers presently possessed by Canada and British Columbia in accordance with the Constitution of Canada. This transfer is by itself unconstitutional.

By that, he means that an amendment to the Constitution is required.

In a nutshell, these legal scholars on this side of the argument argue that section 35 is expressly silent on self-government. While self-government was discussed in 1982 and subsequently in 1983, no consensus arose; hence, the Charlottetown Agreement, Meech Lake Accord, a series of conferences, and then turning the whole matter over to the Royal Commission on Aboriginal Peoples for study.

The second major approach was put forward by legal scholars such as Professors Ryder and McNeil, and crystallized by Professor Monahan and Dean Hogg. Although they did not testify before our committee, we were asked to apply their testimony from the House of Commons. That is a shame, in my opinion, because their elaborations would have been helpful to our deliberations, as the Government of Canada seemed to use their opinions, although we are not certain, as this is cloaked by executive privilege.

Succinctly, and I hope accurately, I think they argue that First Nations, at the point of Confederation, retained all their inherent rights and land claims. Therefore, contrary to the opposing view, they state and infer that "inherent rights" includes self-government. Section 35, therefore, implicitly covers self-government. Therefore, rights are concurrent and exclusive, and they are not taken from sections 91 and 92. They are merely given constitutional status.

Some scholars in this approach stated that paramouncy for the federal government was extinguished by sections 35(1) and 35(3) and concurrency governance was acknowledged. Professor Monahan stated to the House of Commons essentially his view that sections 35(1) and 35(3) contemplate an agreement such as the Nisga'a agreement and, upon ratification, are constitutionally protected. He stated further, in the House of Commons evidence:

On the second question, the issue of infringement, yes, I agree with that. I think there would be some scope for Parliament under the *Sparrow* test, under the *Badger* case, to pass a law that might in some circumstances take precedence over the terms of the treaty.

I would say, though, in fairness, that I think the courts would construe that very narrowly, because the test of justification that would have to be applied in those circumstances would be a very significant test, I think, a very rigorous test. Because how could the courts say that we have now entered to this agreement and compromises have been made — the aboriginal people have made compromises, federal and provincial negotiators have made compromises — and now Parliament in effect wants to overturn that? I think it would be a very limited kind of circumstance in which you could envisage Parliament or the legislature enacting laws that were inconsistent with the provisions of the treaty.

In conclusion, honourable senators, what is left? Both agree that self-government for aboriginals is necessary and that this right was not extinguished, although perhaps dormant. Both agree that the Supreme Court has not yet ruled on this matter. The first view states that sections 35(1) and 35(3) have not implicitly allowed for self-government. The second view states that self-government is implicit and does not place weight on what legislatures, I gather, intended at the time. Perhaps what they are saying is that there was sufficient discussion to give credibility to it, or they are simply saying that those who passed the amendments in 1982 and 1983 may have intended one thing, but the words speak so loudly to another course. Of course, the Supreme Court has not made a determination.

The first view certainly states that in 1982 the Prime Ministers and premiers discussed self-government, transfer payments, who exercises self-government, what format it should take, and so on, but there was, sadly, no consensus; hence, the aboriginal conferences and hence the royal commission. Since the Charlottetown Agreement was rejected, it cannot be used to support or reject conclusions in the interpretation of section 35(1).

The second view employs the "living tree" doctrine of Lord Sankey, who described the BNA Act as a "living tree capable of growth and expansion within its natural limits." A written constitution is not the whole constitution. One must take into account practices and conventions.

The Royal Commission on Aboriginal Peoples struggled with two concepts — and this is overriding, I believe, in their report — namely: first, who in the aboriginal community has the right to exercise the right of self-government; and, second, if self-government exists, how does it square with the Canadian Constitution.

I think they saw a vacuum of consensus on the points. Therefore, they prefaced their conclusion with a huge blueprint of renegotiations of the Royal Proclamation and companion legislation, a Canada-wide framework agreement and parliamentary act, a social and economic underpinning, and, above all, public education before the Canadian government gained legitimacy to negotiate a modern-day agreement that would include self-government. It was only at that point that the Royal Commission on Aboriginal Peoples introduced the "living tree" doctrine. We must remember that their blueprint asked for 20 years so that those practices and conventions could be put into place.

**The Hon. the Speaker *pro tempore*:** Honourable Senator Andreychuk, I am sorry to interrupt, but your speaking time has expired. Are you asking for leave to continue?

**Senator Andreychuk:** Yes.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.



**Senator Andreychuk:** One must remember that the royal commission recommendations were just that, recommendations. Their conclusions are simply their opinions, not with the full force of judicial sanction. At pages 119 and 120 of volume 5, under the chapter "Constitutional Amendment, the Ultimate Challenge," the commission stated the following:

In this report, therefore, our recommendations are presented in such a way as to ensure that they can be implemented without constitutional change.

They had one exception, with which I am sure Senator Chalifoux is familiar, namely, the Alberta Métis Settlements.

• (1430)

On page 120, they say:

...Commissioners have reached a number of legal conclusions that clearly push the boundaries of the constitution to new limits. Critics of these conclusions may well disagree and offer alternative interpretations. Rather than risk conflict over what the constitution does or does not mean, some would prefer to resolve issues through formal constitutional amendments.

They conclude that the aboriginal and treaty rights recognized and affirmed in section 35(1) include the right of self-government. However, they stated:

It is impossible to predict whether the Supreme Court would reach the same conclusion, but it is a major premise upon which much of our report is based.

Honourable senators, that is important because the scholars upon which the government seems to have relied are the same scholars who gave legal opinions to the effect that it push the limits of the Constitution to avoid constitutional amendment. Rather than following the whole network, the government seems to have relied on the legal interpretations that might lead to the point of view that a constitutional amendment is not required and, therefore, the scholars still maintain their position.

To defend the commissioners — and I think it is fair to do so — they were painfully aware of the failure of the Charlottetown Agreement and of the prevailing climate and the lack of appetite for constitutional amendment. Therefore, they put in this elaborate policy process and framework to give the Canadian government legitimacy in negotiating before they stretched the Constitution.

Regrettably, the Canadian government has taken none of the steps outlined in the royal commission report or created their own approach. Instead, Minister Jane Stewart announced the 1995 "Gathering Strengths" policy, and then the government brought in Bill C-9. The professors who gave their opinions on his proposal to stretch the boundaries of the Constitution to new limits have, of course, maintained their views despite the

legitimacy of implementing the fabric of the royal commission report.

Much must be said about negotiated settlements as being the best approach. However, again, it is interesting to note at page 120 that the royal commission report had a slightly different take on this issue. They said the issue could be resolved through formal constitutional amendment or through litigation. The question raises the prospect of a legal challenge from adherents of one of the stated positions, as we now have. How such a case might arise is, perhaps, of less significance than the eventual resolution, which must be linked to a interpretation of section 35 of the Constitution, 1982.

Therefore, honourable senators, my inference is that the royal commission needed, wanted, and was trying to find a way to push the limits to gain certainty on what section 35 means. It is so painfully obvious to us today that the necessary interpretation must avoid the need to go back and restart with the aboriginal peoples. That would be inherently unfair.

Therefore, with everyone so certain that litigation is inevitable to determine the meaning of sections 35(1) and 35(3), and with two lawsuits pending already, the proposed amendment by Senator St. Germain would allow the government to make the following reference. It would give clear direction. It would not create winners and losers. Supreme Court Chief Justice Antonio Lamer once said that we are all here to live together, that therefore, winners and losers should not be our end gain. It would save horrendous costs and time, and it would give the certainty that this bill in and of itself, does not.

I now turn to my deepest concerns about Bill C-9 — minority rights and our fiduciary responsibilities. The Charter of Rights and Freedoms is Canada's main instrument for protecting minority rights. Does it apply to aboriginal governments, to the Nisga'a agreement, and more particularly, to Bill C-9? The Nisga'a and the federal government say yes. If that is so, it should have said just that and nothing more. Sections 25, 28 and 35(4), which provide equal guarantees between men and women before their governments, would have been guaranteed.

However, the agreement states that the Canadian Charter of Rights and Freedoms applies to Nisga'a government in respect of all matters within its authority. They then added, "bearing in mind the free and democratic nature of the Nisga'a government as set out in the agreement." What does this qualifier do to sections 25, 28 and 35(4), let alone all of the Charter? To qualify the Charter application is dangerous to the protection of minority rights and gives uncertainty to the fundamental rights of minorities — both Nisga'a and non-Nisga'a.

I will not elaborate on the point of the non-Nisga'a. I believe Senator Grafstein has raised that question, and it has not been answered fully yet. I would have liked evidence on the compliance with international law on this point, and this should be explored.

Mr. Aldridge, lawyer for the Nisga'a, stated that everyone agrees with the fundamental principles of democracy, that no one is trying to oppress minorities.

That may be so, but history and contemporary times prove that democracies, as well as other types of regimes, have violated minority rights.

My most fundamental concern with Bill C-9 and the Nisga'a agreement is the manner in which it deals with the overlap situation. While proponents of the bill pointed out other agreements with outstanding overlap situations, these were in delegated power situations and were not necessarily good examples of dispute-resolving solutions in any event.

I question whether the federal government, and laterally the House of Commons, have discharged their fiduciary responsibility to the Gitksan and Gitanyow nations. We will soon be doing the same in the Senate.

The protections for land claims in section 35(1) and inherent rights cover all aboriginals. The fundamental principle is that the government should not take sides when there is a dispute and an overlap occurs. While the disputing parties should be encouraged to resolve their differences and overarching bodies such as the B.C. Treaties Commission can lay out the ground rules for settlement in preparation for treaty negotiations, it would take a compelling case such as bad faith, et cetera, to upset this neutral balance. Minister Nault and Mr. Molloy defended their position by saying that if the Nisga'a acted in good faith, that therefore they should proceed to settle the disputed territory. The Gitksan and Gitanyow also acted in good faith. They, however, did not adopt the same time frames and methodology as the Nisga'a, as is their right. Now, they are paying the price — a price that prejudices their claims. They do not have the full ability to negotiate with the Nisga'a and others. They are fettered now. Someone said that when you read sections 32 and 34, you read them down. In any event, in my opinion, this fetters the ability of the Gitanyow and Gitksan to work in a neutral and independent environment. The federal government has taken sides.

By agreeing to the Nisga'a agreement, I believe the Government of Canada has clearly taken the side of the Nisga'a with no corresponding undertakings to the Gitksan and Gitanyow. It is not just a case of the Nisga'a agreement being completed first. Minister Nault stated before the committee — and his comments were elaborated upon by Mr. Molloy — that the government accepted the Nisga'a claims. It took their side. It therefore deprives the others of a negotiated settlement and forces them to litigate or capitulate — costly in both money and in claims.

• (1440)

I have the greatest regard for the professionalism of Mr. Molloy, the chief negotiator. I do not believe he acted inappropriately. The government's removal of Mr. Molloy as negotiator for the Gitksan and Gitanyow and placing him, midstream, as negotiator for the Nisga'a certainly appears unjust and prejudicial. I am not saying that it is; I am saying that it has that appearance. Justice is built on both pillars.

Minister Nault stated that Mr. Molloy was his best negotiator. Why would he not want him on the Nisga'a file? If that is true, and I believe it probably is, then the real question is: Why should the Gitksan and the Gitanyow now get the second-best negotiator?

I will not reiterate the first four recommendations contained in the report on governance of the Aboriginal Peoples Committee, nor will I reiterate the committee's observations appended to its report on Bill C-9. They speak for themselves about the need for fairness and better government policy.

The government's policy in this case leads to the conclusion that the fiduciary duty to the Gitksan and Gitanyow was not discharged appropriately. Bill C-9 is not about perfection; it is about a flawed federal approach and management that violates the Charter and the constitutional fiduciary responsibility to the Gitksan and Gitanyow. It is to the credit of the Gitanyow and the Gitksan who have said that they did not want to hold back the Nisga'a — they want only their rights.

The government has put Parliament, and more particularly the Senate, in an untenable position. To vote for the bill is to violate the rights and to not discharge the fiduciary responsibility we have toward the Gitksan and Gitanyow. To vote against the bill would be to do the same to the Nisga'a. How unfortunate.

Some senators have stated that we owe the Nisga'a this agreement as a way out of past wrongs. However, we cannot correct the wrongs of the past by committing new ones. The aboriginal peoples and their rights and claims survived because they tenaciously held on to the concept of the rule of law, and we can do no less.

Dr. Gosnell said, "Walk with us". I sincerely want to, but not into a blind alley out of which he and I will take decades to walk. I want to walk with the Nisga'a, the Gitksan, the Gitanyow and all Canadians. My conscience and my fiduciary and constitutional responsibilities compel me to do no less.

**Hon. Herbert O. Sparrow:** Honourable senators, I wish to speak for a few minutes on Bill C-9 and to tell you that I believe we are making a mistake in bringing this type of agreement before the Senate in its present form. We are putting in place building blocks for a racist society in the future. We are legislating a separatist society that will only hold for further racism in the future.

Are we legislating for past injustices or for perceived past injustices? If we are, that will, without doubt, create more injustices and greater racism in the future. We cannot pay for past injustices. However, we can try to give opportunities for a better life in the future for all aboriginals, as well as for all Canadians.

For over 130 years, we have let the Department of Indian Affairs rule this problem in Canada. They have governed on the basis of keeping the natives quiet by keeping them secluded on their reserves and by paying them off so that the rest of society does not recognize the problem that exists. They hid the problem from our view for all those years.



Can we then trust the Department of Indian Affairs to prepare a treaty for the future? They have not served either the Indians or Canadians well in the past. I cannot see this particular legislation serving Indian nations in the future.

There is a saying about someone who went to an Indian reserve and came back the following day to say, "All Indians walk single file — at least the one I saw did." That is what we are looking at now, namely, a narrow, blind approach to what has taken place in the past and what we want to avoid in the future.

Honourable senators, I come from a part of the country where there is a great problem with the natives and their standard of living. I have lived with that for many years. No one can say that I am a racist in my attitudes.

Honourable senators, we are now saying to the nation and to all Canadians that whatever the department negotiates, regardless of how badly they dealt with the issue in the past, is just fine with us. We are not prepared to look at that issue in the parliamentary process, but we should look at it.

In the past six years, we have had five ministers of Indian Affairs and Northern Development. Does anyone really believe that in that period of time any minister — and the last one served but a few months — is more capable and more qualified than many other Canadians, including many in the Senate, to determine the value of that agreement?

For a long time in this country — and most certainly of late — we have been developing what can only be called an "Indian industry" — that is to say, an industry for the legal profession that has managed to keep in the forefront the issues without really bringing forward the need and the necessity to solve those problems. There is a desire within the profession to say that we will bring forth suggestions and let the courts decide. However, we know what that has meant in the past and we know what it will mean in the future. I refer not only to the terrible costs that have been incurred, but to the costs with which we will be faced in the future. Millions of dollars have been spent in this Never-Never Land, and many people are laughing all the way to the bank.

Those who show concern and worry about the repercussions of such agreements are not being racist. They are not being selfish. They have nothing to gain by taking a critical stand on the issues before us. Progress must be made in the negotiations dealing with the native people. There is a saying that goes, "We do not have blind opposition to progress, but we do have opposition to blind progress." That is, perhaps, what we are facing at this day, at this time.

• (1450)

In the Aboriginal Committee, the minister stated that there can be no changes made to the agreement. Why would we have an agreement brought forward where Parliament cannot make changes? What kind of nation do we have when we say that we do not have the final say on this issue?

**Senator Lynch-Staunton:** Hear, hear!

**Senator Sparrow:** The minister made it clear, not only in the House of Commons committee but also in the Senate committee. This is what the minister said in answer to Senator Christensen's question, which was:

**Senator Christensen:** Is there any ability at this point for amendments to this act?

**Mr. Nault:** If you amend the act, then we would kill the agreement. In fact, we would need to go back to the negotiating table because all three participants signed off on the treaty in good faith. The agreement must be accepted, and it is no different from Mr. Clinton signing a treaty with a foreign nation, or when we signed the free trade agreement. That was basically a take-it-or-leave-it relationship, and it is the very same with this.

The minister is trying is trying to sell us on something. He would certainly know that even the Free Trade Agreement can be cancelled with six months of notice. However, this agreement cannot be changed. Why then do we allow, as parliamentarians, such action to be taken and brought forward and not be upset about this process?

The minister goes on to state:

Therefore, it is up to you to decide whether it is a job well done or not well done. If you throw the agreement back at me, then I must go back to the negotiating table because I have two other partners who would want to have a say as to why the Senate decided to change the treaty unilaterally. I do not have the right or the ability to do that.

I ask this question of all senators: What are we doing here as parliamentarians if we do not have that right?

**Senator Lynch-Staunton:** Exactly.

**Some Hon. Senators:** Hear, hear!

**Senator Sparrow:** Let me talk for a moment, then, about the Senate committee study itself.

Honourable senators, very few senators at the committee hearings were not actual members of the committee. That committee heard from 30 witnesses. Some comments were, "We listened to 30 witnesses and that was lots." However, we did listen to 130 witnesses on the gun control bill. At that time, we did not put pressure on to have that discussion stopped. However, here we have possibly the most important piece of legislation to come before the Senate, as the previous speaker said, yet the committee spent only 10 minutes on clause-by-clause consideration of the bill. There was no study in committee of the 250 pages in the Nisga'a agreement. There has been no study of the side agreements that are in the Nisga'a agreement.

Honourable senators, the only subjects that were touched on were the citizenship provision issue, the Charter of Rights and the constitutional amendment issue, and the issue of the paramountcy of Nisga'a laws. There were a few other discussions, perhaps, but no in-depth discussion took place on all the other provisions contained in the Nisga'a bill. Senators who were not at the committee may not even realize that these provisions exist. As well, there was no discussion or clause-by-clause study of the Implementation Act, the financing agreement, the taxation agreement, the harvest agreement, the own-source revenue agreement, the issue papers, or the appendices to the Nisga'a agreement. Those were not studied. Certainly, there would have been no opportunity to discuss them in the 10 minutes spent on clause-by-clause consideration of Bill C-9.

The minister, in regard to the study of these issues, made this statement before the Senate committee:

**Mr. Nault:** Before I go, I again want to extend the invitation, that if there is anything we can give you as far as information is concerned, we will. I am of the same view as Senator Tkachuk that there is a need to have extensive discussion and to nitpick. We look forward to that, because we had a lot of difficulty in the other place in getting down to the facts of the treaty. We were very annoyed about the fact that we did not get to talk about the particular clauses and the chapters and what they mean in the other place. I think that was a disservice to Canadians and British Columbians. If there is anything we can do, the officials are at your disposal. We are prepared to give you everything except our legal advice. Thank you.

Honourable senators, the minister was indicating that the study pertaining to this bill was not done in the House of Commons committee. In fact, he was pleading that perhaps we could do a better job in our committee on that issue.

I should like to talk for a minute about what the minister referred to as "solicitor-client privilege." Why did the committee or this Senate not have access to the advice given by the Department of Justice to Indian Affairs? Senator Lawson asked the following questions in the committee and the minister responded.

**Senator Lawson:** When Senator Comeau asked questions about constitutional opinions and so on, a reference was made to solicitor-client privilege. Who, may I ask, is the client in this case?

**Mr. Nault:** The client is the Department of Indian Affairs and Northern Development.

**Senator Lawson:** The solicitor acts for the Department of Indian Affairs and Northern Development and the minister.

**Mr. Nault:** For the sake of argument, I get billed by the Department of Justice on a regular basis.

**Senator Lawson:** They act for you and the department. Who do you act for?

• (1500)

**Mr. Nault:** I act for the people of Canada.

**Senator Lawson:** We may very well be the client, therefore whatever opinions you have, we have a right to have.

**Mr. Nault:** No, you do not. The courts have ruled on that already, it would then not be client privilege at all. If I had to release every particular, I would then have to find someone else to give me an opinion.

Honourable senators, is he therefore suggesting that you can shop for the opinion you want? Surely the Parliament of Canada should have access to judgments by the Department of Justice. If we do not have access, to whom do we as parliamentarians go to find out what the legal opinion of the Department of Justice is on this agreement?

**The Hon. the Speaker:** Honourable senator, I regret to interrupt the honourable senator, but the 15-minute period allotted to speak has expired.

Are you requesting leave to continue, Senator Sparrow?

**Senator Sparrow:** Yes, honourable senators.

**The Hon. the Speaker:** Is leave granted for Senator Sparrow to continue?

**Hon. Senators:** Agreed.

**Senator Sparrow:** Honourable senators, there are legitimate concerns pertaining to this agreement. We make a serious error in judgment if those concerns are not vented honestly and forthrightly.

Very credible witnesses appeared before the committee including Alex MacDonald, Q.C., a former member of Parliament and former attorney general for British Columbia. In his evidence Mr. MacDonald stated about this treaty:

When you make it unchangeable except for constitutional amendment or agreement, and agreement come at a price, then you have made a grave mistake, and what you have done is in violation of the Constitution.

I know that the agreement says that it is not changing the Constitution, but it is. It is allowing a sovereign entity to make laws. They may be minor or they may be sufficient to send someone to jail on breach of a bylaw, I do not know, but that is changing the Constitution.

It is the first time this has happened and it is almost unbelievable.



Mr. MacDonald continued:

When Parliament makes a treaty by its legislation that gives power to a group of Canadians...and cannot retrieve that power because it is cast in constitutional stone under section 35, it is making a grave mistake.

Parliament can delegate their law-making powers. That happens all the time. However, you cannot abandon those powers.

Mr. MacDonald continued:

As attorney general, I was charged with the administration of justice in the entire province....That mandate has now been clipped. The ability of police forces to go in and investigate is severely limited, if it exists at all.

In any jurisdiction, when someone who was assaulted believes that the powers that be are not investigating the case properly, or are favouring someone, the attorney general has the responsibility to correct that....In the justice section, the ability of the attorney general to administer justice in the province has been severely clipped, and that is unconstitutional.

This bill gives a body sovereignty to make some laws itself without the Queen's assent or Parliament's assent, without it being changeable, which is a violation of the Constitution of Canada and the Royal Prerogative.

Evidence before the committee indicated that it is establishing a third order of government. If that is the case, it is wrong to do so. Further testimony by learned constitutional experts indicates that the Nisga'a agreement and the statutory provisions concerning its ratification contravene the provisions of the Canadian Constitution and cannot, therefore, have the force of law.

At the very least, a third order of government will be created in Canada if the provisions are legal and constitutionally sound. If such is the case, 600 other Indian nations from across Canada may be clamouring for the same powers. How could we manage 600 sovereign nations in this country, all with 14 or more areas of paramouncy in their treaties?

There are those who say that this is the right thing to do. Maybe it is the wrong thing to do.

#### MOTIONS IN AMENDMENT

**Hon. Herbert O. Sparrow:** Honourable senators, in an effort to make the bill somewhat more acceptable, I move:

That Section 3 of Bill C-9 be amended by adding the word "not" following the word "is".

The amended clause 3 will therefore read:

3. The Nisga'a Final Agreement is not a treaty and a land claims agreement within the meaning of sections 25 and 35 of the *Constitution Act, 1982*.

**The Hon. the Speaker:** Honourable senators, I have a problem. A hoist motion is presently before us, and according to all the authorities, a hoist motion cannot be amended. However, in the past, when operating under time allocation, the Senate has agreed to accept a number of amendments and vote on them all at the end of the process, which will be tomorrow at 3:15 p.m.

With agreement, we could consider this motion to be of that type, to be dealt with tomorrow along with any other motions that may be moved. It would be contrary to the *Rules of the Senate of Canada*, and our practices, but, by leave, of course, we can do so and we have done so in the past.

Honourable senators, is leave granted to proceed in that manner? If so, this motion would be voted on tomorrow, after we deal with the hoist motion.

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Therefore, the motion is before us and will be voted on tomorrow.

**Senator Sparrow:** Honourable senators, I move:

That Section 27 of Bill C-9 be amended by adding the following:

"which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a agreement."

The amended clause 27 will therefore read:

The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council, which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a agreement.

**The Hon. the Speaker:** Honourable senators, is there agreement to treat this amendment in the same way as the previous one?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Therefore, honourable senators, this motion will be voted on tomorrow in the same sequence.

• (1510)

**Hon. Gerry St. Germain:** Honourable senators, will the Honourable Senator Sparrow accept a question?

**Senator Sparrow:** I will accept a question, although I may not give my honourable friend an answer.

**Senator St. Germain:** My question of the Honourable Senator Sparrow is with respect to the hoist motion that I have before the Senate. I gather he is not comfortable with it because he has come forward with two other amendments. Can he not see that my motion would facilitate what he is trying to achieve, or does he not feel my motion goes far enough?

**Senator Sparrow:** Honourable senators, I will let the Senate decide which of those motions might be more relevant to the issue at hand. The honourable senator's motion to suspend for a period of time does not give the reason as to why the bill should be hoisted. My specific amendments state the reason for such a move.

**Hon. Anne C. Cools:** Honourable senators, I premise my question by laying out before honourable senators that I really know very little about native affairs and aboriginal questions. However, I do know a little bit about racial questions and about the racism that lives in the recesses of people's minds where legislation cannot reach.

Senator Sparrow, in his remarks, essentially told us that he believed that the track record of the Department of Indian Affairs in these matters did not properly lend itself to the department bringing forth a treaty for the future. What Senator Sparrow essentially said is that the past did not yield harmoniously to the future.

My question of Honourable Senator Sparrow is this: In the committee study, was any attention paid to what I would describe as the ghettoization of society, the ghettoization of communities? We all know that the doctrine of "separate but equal" began in the United States of America as a worthy and well-intentioned notion. We all know very well that apartheid in South Africa began with the well-intentioned notion that by the creation of separate communities, somehow or other those communities would be endowed with a special set of skills.

All of us in this chamber want to see the plight and the conditions for native peoples greatly improved. I think I heard from Senator Sparrow — I am not sure, and if I am wrong, he can correct me — a nagging concern that, somehow or other, in going forward in this way, the government may be creating, if not ghettos, the possibility for a form of apartheid or a form of ghettos. In answering that question, can Senator Sparrow tell me whether the committee considered the possibility that we may be creating such potential in the future?

**Senator Sparrow:** Honourable senators, the answer is no. To my knowledge — certainly any time that I was in committee — the discussion on that particular issue did not come up. Personally, I have the concern that we may be setting up additional ghettos, not only there, but, as the treaty process progresses, across the country.

Honourable senators, we have Indian reservations across the country. We certainly have them in Saskatchewan, and only in Saskatchewan did they bring in what they call a land entitlement act. We are creating new and expanded Indian reservations. We have expanded them into the urban communities. We have urban

reserves within the urban communities, and already one can see the backlash and the racism created by that situation. It is a very disturbing move, and I think it augurs poorly for good race relations and the absence of racism in the future.

**Hon. David Tkachuk:** Honourable senators, the examination of Bill C-9, our committee's study and the debates in this chamber have inadvertently turned into an examination of the very concept of self-government for Indian people in this country. Inadvertently as well, this has turned into an examination of ourselves as parliamentarians, which we are. If there is any place that citizens in this country can come and expect redress, or expect that the law will be properly served, and expect that the Constitution will be upheld, and expect that we will be all treated equally, it is in this place. If not here, then where?

This is a troubling thing that we are doing here.

Honourable senators, I should like to read into the record a portion of a letter from Ms Wendy Lockhart Lundberg. I think all honourable senators received a copy of this letter. She is a status member of the Squamish nation, one of 50 bands negotiating treaties in British Columbia. She was not able to testify before us, but she submitted her brief, and it is included with our other evidence. Her letter states, in part:

After reading the material I obtained, I find that my primary concern is that the language of Bill C-9 asserts collective rights over the rights of the individual. I am concerned that this is a further erosion of native women's rights. It is ironic that self-government initiatives are often referred to as 'modern day treaties'. I find that these initiatives do not advance native women on the path towards equality but rather they are draconian in their present form, relegating native women to the Dark Ages.

She goes on to say:

Although it was stated that British Columbia's Family Relations Act will determine the division of matrimonial property under Nisga'a law, I have found no reference to this statute in my reading of the documents that I possess... And how, under Nisga'a law, will property rights apply to native women as regards inheritance and expropriation?

All senators should read this brief before we vote tomorrow because she is asking us for assistance and she is asking us for redress.

• (1520)

It is appalling that this discussion did not take place prior to the debate about how we would negotiate treaties. That is why we find ourselves with a minister who comes before us and says "You are the Parliament of Canada, but you cannot change anything. It is yes or no, because how am I to take the bill back to my department and tell them that it did not pass the Senate?" Of all places, the Senate might have something to say about this treaty and about this bill.



Honourable senators, we should have hammered out certain principles to guide federal ministers in this negotiation with the First Nations people. Once that had been accomplished, the federal government could then have proceeded knowing that there was some consensus in this place and in the other place, rather than subjecting the Nisga'a to a debate not of their making.

The Nisga'a know what they want. They even held a referendum. We are a long way from that particular vehicle. The people of British Columbia are asking for a referendum, but we are saying no to them, as the B.C. government said no to them. In our referendum on the Charlottetown Agreement, a great majority of people — 60 per cent or more — rejected the proposal for aboriginal self-government. There was enough opposition to breaking up the country, according to the people on the other side, but not enough to prevent this bill.

A number of troubling issues have been raised, such as the overlap situations; the constitutional issues that Senator Andreychuk spoke about and on which I will speak later; and the institutions that we are creating, namely, a third order of government, or, as Senator Austin would say, an aboriginal government.

At committee, we heard from two professors of law from Osgoode Hall, Dr. Bruce Ryder and Dr. Kent McNeil, who brought forth the Monahan doctrine of the growing tree, or the Osgoode Hall doctrine of the growing tree. As a simple man, I am not intimidated by judges, lawyers and constitutional professors. The same people who throw me in jail for smoking in a restaurant allow pornographic materials about children to be viewed in a person's house. However, these are the people who came before us. As a simple person, I want to get along with everyone. Yet, here these people are telling us what the Constitution means. I will spend a few moments quoting them so that all honourable senators can become acquainted with the nonsense we had to put up with as we listened to these two professors from Osgoode Hall, the very professors to whom the Government of Canada is listening, Senator Austin being one of them.

Senator Austin says that there is no third order of government. We will get to that issue later.

If we look at the Nisga'a powers that that have been discussed, such as citizenship, culture, language and property, federal and B.C. laws will be rendered inoperative to the extent that they conflict with Nisga'a law. I am speaking of concurrent powers. This concept is perfect for Quebec separatists. If we recognize concurrent powers for the Nisga'a, why cannot we recognize the concurrent powers of federal law for Quebec? We are talking about the growing tree here.

In committee, I asked Mr. Ryder this question:

**Senator Tkachuk:** You are saying that in 1867, when they were drawing up the Constitution, lurking in the background was another power. It was almost like another power that they never considered at the time, but in 1983 or

1982 it was considered and has evolved over the last 18 years into this creature that we now have, called the Nisga'a agreement. You seem to be describing a third order of government here — that is, another level that we had not considered.

Professor Ryder from Osgoode Hall replied:

**Mr. Ryder:** It is appropriate to describe a third order of government.

Senator Austin, you should be listening to this; these are your own lawyers. Professor Ryder went on to say:

When we say "third order", we already have municipal government. I mean a third order of government that has constitutional status.

Therefore, we will have to rework this thing that we send out to the children in all our schools, where we actually have a diagram about the institutions of our federal government — that is, the Senate, the House of Commons, the Queen and Canada's parliamentary system. We will be adding another order of government with this bill. No amount of talking around the edges will say that we are not doing that. Let's just admit it. Maybe it is something that we should do, but we should not deny that we are doing it. That is what they are doing in the other place. They are amending the Constitution through the back door.

Professor Ryder goes on to state:

I did not mean to take issue with other witnesses who have suggested that the treaty gives constitutional protection to a third order of government, that is true. All I meant to suggest was that it is not new in doing so.

I then said:

It is new to me and new to most of us.

Professor Ryder then says:

...there is still room for debate — and senators have been fully exposed to the debate — that the aboriginal right of self-government is already recognized in clause 35(1).

That would be a big surprise to Senator Buchanan and to all the premiers who were there, as well as the Prime Minister himself.

Professor Ryder then goes on to say something interesting:

What we are trying to do now — and what we have been trying to do for many years — with the 1982 act —

He clearly stated "What we have been trying to do" — not us, but them, at Osgoode Hall. He goes on to state:

— and the process of treaty making is reconcile the assertion of sovereignty that did not take into account the prior sovereignty of aboriginal peoples. We have, in a sense, rediscovered their rights.

It is like that Steve Martin album — “I forgot.” He is saying that we have this Constitution and, whoops, 130-some years later, we forgot about those aboriginals. We forgot! In my way of thinking, when someone forgets to do something, they have to fix it — especially if they forget to do something important. They have to fix it in the way that the document says that they have to fix it because all kinds of bad people could come up to you and say, “You forgot that, too, so you have to fix that through the back door. Let’s work this Constitution up real good, but let’s not tell anyone about it, because if we bring all the premiers together and we bring all the people into this debate, there may be a problem. They may not like it, and we cannot have that. We have to bring it through the back door.” That is exactly what they are doing here — just in case they do not like it. That is not the country I came to. If we forgot, honourable senators, we have further problems.

Professor Ryder then goes on to say, and this is very important:

We made the decision in 1983 to embrace treaty rights that were concluded in the future.

I do not deny that. He then states:

From the aboriginal perspective, however, those limitations on Canadian governments’ powers ought to have been recognized because of their inherent rights of self-government grounded in the prior sovereignty and prior occupation of the land.

I maintain that if those premiers and the Prime Minister at that time knew that section 35 meant the Nisga’a bill — self-government, constitutionally protected — we would not have had a section 35.

• (1520)

**The Hon. the Speaker:** Honourable Senator Tkachuk, I regret to interrupt you, but under the order of the house, I am obliged to do so at 3:30.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I propose that we give leave for Senator Tkachuk to continue to the conclusion of his remarks, including comments and questions, and that we not see the clock until that has occurred. I propose as well that we give leave to any standing committees of the Senate that have arranged meetings for 3:30 to sit even though the Senate is now sitting.

Honourable senators, I might comment that I had asked to revert to the adjournment motion later this day. I no longer wish to do so.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, we think that is a practical proposition and we would grant leave.

**Senator Cools:** Honourable senators, I, too, am prepared for us not to see the clock. However, at some point we should get a

clarification. If an order of the Senate was made that we should cease sitting at 3:30 and that the Speaker should rise, I wonder if we can remove such an order just by saying that we will not see the clock. This is a very important point. At six o’clock in the evenings when we agree not to see the clock, we are acting under a particular rule of the Senate. However, in this case a specific order was made. At some point, we should visit the question of whether we are acting properly.

**Hon. Douglas Roche:** Honourable senators, as a point of clarification, is the intent of Senator Hays’ statement that the Senate would adjourn following Senator Tkachuk’s remarks and that the rest of the Order Paper for today would not be addressed?

**Senator Hays:** Honourable senators, in answer to that question, we have an order of the Senate from yesterday that at 3:30 we would adjourn and that all the remaining orders on the Order Paper would stand in their place.

I am asking now, and Senator Kinsella has commented favourably, that the Senate continue to sit to the conclusion of Senator Tkachuk’s remarks on Bill C-9, following which, by operation of the order to which I referred a moment ago, we would automatically adjourn.

On the point of Senator Cools, under the rules or by virtue of order of the chamber, we have a well-established practice of not seeing the clock. I do not think there is much question of leave being the appropriate way of doing that.

**Hon. J. Michael Forrestall:** Honourable senators, I have a brief question for clarification. I get nervous and edgy when a senator stands up and says, “Leave having been given, I no longer want to do what I previously wanted to do.” What is behind that practice?

**Senator Hays:** As honourable senators know, we have an order to vote on Bill C-9 at 3:30 tomorrow. My concern at one point was that we might not have adequate time for all senators who wish to speak to Bill C-9 to actually be able to do so. I discussed with the Deputy Leader of the Opposition the possibility — although we did not conclude our discussion — that instead of adjourning to 2 p.m. tomorrow, we would adjourn to 1:30 p.m., or perhaps even earlier, to allow time for all senators who wish to speak to Bill C-9 to do so.

**Hon. Lowell Murray:** Why not do that? You can always do what you have just done and simply ignore the order of the house and, by unanimous consent, waive the order of the house and move on.

**Senator Hays:** At 2 p.m. tomorrow, obviously it would be too late to get unanimous consent to sit at 1:30 p.m.

**The Hon. the Speaker:** Honourable senators, the proposal is that, with leave, I not see the clock and that we proceed to hear Senator Tkachuk and any questions or comments that arise from his speech. I would then see the clock and leave the Chair.



Meanwhile, it has been proposed that committees which were scheduled to sit this afternoon have leave to sit. I believe it would be cleaner for the purposes of the Senate if there were a motion to that effect so that there would be an entry in the official record. If it is agreeable, I suggest that Senator Hays might move, seconded by Senator Kinsella:

That, with leave of the Senate and notwithstanding rule 58(1)(a), all Senate committees scheduled to sit at 3:30 p.m. today have power to sit while the Senate is sitting and that rule 95(4) be suspended in relation thereto.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

**The Hon. the Speaker:** Honourable Senator Tkachuk, please proceed.

**Senator Tkachuk:** Honourable senators, I wanted to read these excerpts from the testimony we heard to show how illogical it seemed to me.

We are set to buy a theory of constitutional law. It is not like all the participants are dead. It is not like the law was made 100 years ago and people write about it in a book, saying that this is what they really meant and that there is no one to argue with them because they are all gone. Constitutional lawyers do that all the time and courts do that all the time. They make decisions about what people thought 150 years ago because those people are not there to defend themselves. However, they cannot do that with this growing tree because it is still very young. It has not even sprung from the ground. We are expected to buy this theory of the growing tree.

Honourable senators, we are talking about 1982 and 1983. Every premier, as far as I can tell, knows that what was said happened did not really happen. If they knew that it was going to happen, I know for a fact that they would never have put section 35 in the agreement. They would never have put section 35 into the Constitution. We have a real problem here.

Honourable senators, another thing bothers me. If we constitutionalize something, there is no turning back. This tree will grow. There are 600 of them.

**Senator Cools:** It is a forest.

**Senator Tkachuk:** It will be a situation with which our children must deal. I do not look forward to that, and I do not look forward to that for them.

Who was here first? I do not know who was here first. I really do not. The First Nations say they were here first. They even say the Inuit came after them, but we really do not know that for sure either. The First Nations say they were here first, and so they get a set of rights. Then we have the Inuit, and they get a set of rights. Then, of course, along came the French. They came to Quebec 500 years ago. They have a set of rights. They have special rights, too. They want language rights. We are developing layers of rights based on race and ethnicity.

That is what my grandfather, a 15-year-old Ukrainian who ran away from Ukraine, thought he was trying to run away from. We know the problems that rights based on race and ethnicity have caused over there, and we all see it. Our peacekeepers are still trying to deal with those problems. The beauty of this country, at least as my grandparents told me, was that we were all here and we would all be equal. We would all be the same and we would all be governed by the same laws.

Honourable senators, we have not yet had this debate in our discussion of the Nisga'a bill. We will have layered rights in this country.

The situation of the Cree is interesting because they are not indigenous to the Prairies. They came from Ontario and Quebec with guns, and they cleaned out the people who were indigenous to the Prairies. We have all those issues, too. Do we bring back the Bloods and say that they were on the Prairies first and chase the Cree back to Ontario and Quebec? That way of thinking has no end.

I ask honourable senators to support Senator St. Germain's amendment to hoist Bill C-9 in an effort to allow it to be properly examined. Otherwise, it will be in the courts for a long, long time, and it will hold up further issues and further negotiations that must take place.

On motion of Senator Kinsella, for Senator Lynch-Staunton, debate adjourned.

The Senate adjourned until tomorrow at 2 p.m.





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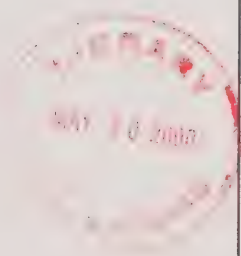
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OFFICIAL REPORT  
(HANSARD)

**Thursday, April 13, 2000**

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Thursday, April 13, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

[Translation]

Prayers.

### SENATORS' STATEMENTS

#### DENTAL HEALTH MONTH

**Hon. Norman K. Atkins:** Honourable senators, I rise with pleasure to invite all senators in this chamber to join in "A Celebration of a Smile" and to "Keep Smiling" during the rest of April, as Dental Health Month unfolds in Canada.

Dental Health Month has its origins in a resolution adopted in 1957 by the governing body of the Canadian Dental Association. The Leader of the Government in the Senate will be interested to know that the incoming national president is a dentist from Sydney, Nova Scotia. The resolution was to set up a national dental health week, or day or days. This resolution resulted in the designation of Dental Health Week, which, in the late 1970s, became Dental Health Month.

In the early 1960s, the oral health problems of Canadians were tremendous. Among other factors, there was a shortage of dental health professionals, no dental insurance, and most of Canada's drinking water was not fluoridated. As well, there was less public awareness of and interest in oral health. Today, however, we are lucky to have one of the highest levels of oral health and one of the highest standards of oral health care in the world. This is thanks, in large part, to the efforts of Canada's dental health professionals and the organizations that represent them.

Dental Health Month has been very successful in increasing public awareness of the importance of oral health and good oral health care. During April each year, the Canadian Dental Association, provincial dental associations and local dental societies undertake a wide variety of activities. These include information displays and advertisements, lectures on subjects such as oral cancer and mouth care for the elderly, contests and free dental clinics for those in need.

Dental Health Month reminds us how important it is to keep our teeth and gums healthy, whether we are children or seniors. It is a good opportunity for all Canadians to review their oral health care regime and improve it, if necessary, to prevent problems.

Honourable senators, I should like to take this opportunity to congratulate Canada's dental professionals for their dedication to improving the oral health of Canadians and for sponsoring Dental Health Month in April.

### THE IMPORTANCE OF EDUCATION TO YOUTH

**Hon. Rose-Marie Losier-Cool:** Honourable senators, today Parliament Hill was the site of many activities important to us parliamentarians and to all Canadians.

Very early this morning, the Speaker of the Senate had as his guests some 200 young people at a "Forum for Young Canadians" breakfast, which a number of senators attended as well. I see these young people are in the gallery.

At 10:30 a.m., a fine ceremony was held in the rotunda of the Centre Block on the occasion of the unveiling of the sculpture of the Nunavut coat of arms, under the honorary chairmanship of the Speakers of the two Houses, Senator Molgat and Mr. Parent.

At 11:00 a.m., in the Centre Block, I took part in another event organized by Oxfam Canada, Oxfam Quebec, the Centrale de l'enseignement du Québec and the Canadian Teachers' Federation promoting the world action plan on education.

I would like to comment briefly on this event. Ten years ago the leaders of 155 countries met at the World Conference on Education for All. They agreed to provide quality primary education to all children by 2000. They failed.

Today, some 125 million children are not in school. Most of them are girls. Imagine for an instant all the children in North America and Europe between the ages of 6 and 14, and you will have an idea of the number of children in the world who will never be attending school. However, statistics prove that education is the most powerful weapon we have against poverty. The same world leaders will be meeting again in Dakar, Senegal at the end of April, with the aim of achieving education for all by 2015.

As the African proverb puts it, teaching a child is the business of the entire village. Universal primary education is expensive but according to the best estimates, an additional \$8 billion a year, less than half of what American parents spend on toys for their children in a year, is what it would take.

[English]

Honourable senators, those 125 million children worldwide who do not go to school deserve more than rhetoric. There is a solution. The Global Action Plan for Education has been endorsed by hundreds of citizen groups in 90 countries. As Canadian citizens, let us work together so that the dream of those 125 million children becomes a reality.



## PARKINSON'S DISEASE AWARENESS MONTH

**Hon. Brenda M. Robertson:** Honourable senators, I wish to bring your attention today to the fact that April is Parkinson's Disease Awareness Month. Parkinson's disease is a slowly progressive, neurological condition that affects body movement or the control of movement, including speech.

Parkinson's disease has plagued society for centuries. However, it was only in the 19th century that the disorder was clinically recognized. Parkinson's disease affects people worldwide, including more than 1 million people in North America. At one time, Parkinson's occurred primarily in people over 65 years of age. Unfortunately, the current research shows that 30 per cent of patients are now diagnosed under the age of 50.

It is important to note that Parkinson's disease is not a fatal illness. Public health strides and healthier lifestyle choices have allowed people with Parkinson's to live well into their eighties; however, as the disease progresses, patients generally become unable to care for themselves. This causes both financial and emotional hardship on Parkinson's sufferers and their families.

Although strides in research have been encouraging, more money and research are needed to develop a cure. Recently, as perhaps honourable senators will remember, Parkinson's disease has been gaining public and media attention thanks to the openness of Michael J. Fox about his affliction with the disease. An accomplished actor of 20 years, a father and a husband, Michael J. Fox has become a spokesperson for Parkinson's in an attempt to raise both awareness and funding.

Honourable senators, one Parkinson's sufferer described being diagnosed with the disease in this way: "It is not a death sentence but a life sentence." With increased awareness and funding, hopefully this century will see a cure for a disease that seems to be gaining on us.

## CANCER AWARENESS MONTH

**Hon. Michael A. Meighen:** Honourable senators, as we approach the middle of April, I rise to remind us all that April is Cancer Awareness Month in Canada. Unfortunately, I feel entirely confident in saying that cancer has touched the lives of each and every one of us in this chamber. It is astonishing to realize the number of people who suffer this disease. It is particularly disheartening to hear of younger and younger Canadians being afflicted with various forms of cancer.

Extraordinary Canadians have been struck down by this persistent disease. Who among us can forget the haunting pictures of Terry Fox running along the lonely highway, trying to raise awareness and money for cancer research? In 1977, Terry was only 18 years old when he was diagnosed with bone cancer and forced to have his right leg amputated.

In 1980, Terry started his Marathon of Hope. Can you believe, honourable senators, that 20 years have already passed? Although the spread of the disease eventually put an end to his marathon, his fight continues today. Terry Fox is legendary in our country. To date, his foundation has raised more than \$250 million for cancer research.

The recent death of Olympic medallist Sandra Schmirler brought home for many of us the notion of how quickly this disease can rip a young family apart. With her competitive spirit and enthusiasm, Sandra made us all proud to be Canadian.

These two Canadians are among thousands who have fought and lost their personal battle with cancer. Indeed, in 1999 alone, 63,000 Canadians died of cancer and, regrettably, this number continues to rise. Considering how overburdened our health system is, more funds are urgently needed to increase the remission rate, promote prevention and eventually find a cure, for find one we will.

The fact that we have not yet done so should not be cause for discouragement. In the last 50 years, researchers have built a solid foundation of knowledge about cancer, and our success rate is on the rise.

All of us know people who have lost their battle with cancer, but we also know some — such as myself and others in this chamber — who are survivors. Cancer has plagued our society for too long and we need to make greater strides in eliminating the disease.

In this, unlike some other endeavours, money does make a difference. We Canadians, both privately and through our governments, must find the dollars.

I urge all honourable senators and all Canadians to dig as deeply as they can into their own pockets so that, sooner rather than later, we shall be rid of this scourge.

## EIGHTEENTH ANNIVERSARY OF PROCLAMATION OF CONSTITUTION ACT, 1982 AND THE CHARTER OF RIGHTS AND FREEDOMS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, on Monday next, April 17, Canadians will mark the eighteenth anniversary of the historic proclamation of the Constitution Act, 1982. We will recall the presence on Parliament Hill of Her Majesty Queen Elizabeth II on that misty day of April 17, 1982, when the Constitution Act, 1982, together with its Canadian Charter of Rights and Freedoms, was proclaimed. I know that several members in this house were there that day.

The mist in the air that day spoke to our tears of joy and achievement, for we were witnessing the "coming of age" of Canada. As a nation, we had reached at last the goal of that long journey to full sovereign independence that began with Confederation in 1867.

Honourable senators, we recognized that the road travelled had not always been an easy journey and we also realized that the road ahead would present its challenges. However, all the peoples of Canada have shown themselves to be equal to the obstacles of the past and indeed are up to meeting and overcoming the challenges of the future. We recognized the importance and value of those tried and true Canadian devices — flexibility and compromise.

While some have found fault with Canadian's use of ambiguity, most recognize that the genius of Canada has been to avoid allowing the search for excessive virtue to become a vice.

Honourable senators, there would have been no Charter of Rights and Freedoms without the *non obstante* provision. Those of us who have clearly opposed such a measure have learned to live with it and, fortunately, the common sense of Canadians has ensured its limited use.

• (1420)

Therefore, honourable senators, the anniversary of the Charter and the Constitution Act, 1982 on Monday next, is also a time to celebrate the wisdom and common sense of Canadians.

### NEW BRUNSWICK

NATIONAL FRANCOPHONIE WEEK—CONGRATULATIONS  
TO CENTRE SCOLAIRE SAMUEL-DE-CHAMPLAIN AND  
ARCF DE SAINT-JEAN ON WINNING AWARD

**Hon. Erminie J. Cohen:** Honourable senators, as you are aware, the Province of New Brunswick is the only official bilingual province in Canada. Many regions in our province have mainly francophone residents. The French community in Saint John accounts for only 10 per cent of the population, which is approximately 12,000 people.

It is with pride that I inform you that the Centre scolaire Samuel-de-Champlain and ARCF de Saint-Jean have just won a national award held during National Francophonie Week. This contest, called "Actifs et fiers...En français...bien sûr!", the first of its kind, was organized by the Canadian Education Association of the French Language.

Forty-five French organizations participated in this inaugural event. The criteria included value of the French language and its culture, the diversity and individuality of the proposed activities, and the number of those activities enjoyed by the community as a whole. According to Mr. James Thériault, executive director of ARCF de Saint-Jean:

...this award is one the entire community may be proud of.

He continued:

Of course, such an award reinforces the fact that our Francophone community is on the right track.

Honourable senators, this recognition speaks to the wonderful spirit of cooperation that is emerging in our community. The French community in Saint John, New Brunswick, is a vital addition to our city. As New Brunswickers, we share their pride in receiving this meaningful award.

### NATIONAL LAW WEEK

**Hon. A. Raynell Andreychuk:** Honourable senators, I, too, want to say a few words about National Law Day, which has become National Law Week. As Senator Kinsella pointed out in his statement, the repatriation of our Constitution in 1982 was an important point in the history of the development of this country. It meant that, at last, we would be able to amend our Constitution without involving the British Parliament. It also meant that our parliamentary democracy would have a constitutionally entrenched Charter of Rights and Freedoms — a victory for minorities.

The entrenchment of the Charter of Rights and Freedoms in our Constitution brought into focus for Canadians, as perhaps never before, the role of the courts in our society and the role that Parliament plays in enacting laws that our courts enforce. The original intent of Law Day was to give an opportunity to those involved in law — teachers, judges and lawyers — to bring to the attention of the general public varying aspects of the legal environment, through lectures and seminars.

The theme for Law Week for this year is "access to justice". This is a crucially important theme because in recent years, with cutbacks in government funding and the reduction of government programs, the provincial legal aid plans across the country are in some jeopardy. It is through these legal aid plans that we ensure, in an institutional way, secure access to the legal system for those who cannot afford to retain legal assistance. Access to competent legal representation must be assured if our legal system is to survive.

Our legal system is predominantly an adversarial system. As that great American legal scholar, Jerome Frank, stated:

It is in the adversarial system that the truth will emerge.

Therefore, assuring access to the legal system for all Canadians is an appropriate theme for law week. In various communities across this country, courthouse tours have been arranged, career panels held in high schools and universities, and, in my own province of Saskatchewan, a provincial mock trial competition has been organized. Not only will this provide important experience to the students involved, but it will bring to the public's attention the importance of the legal system in our society.

The Canadian Bill of Rights, enacted by the Parliament of Canada in 1960, and the Charter of Rights and Freedoms, entrenched in our Constitution in 1982, both acknowledge that Canada was founded upon the principle that recognizes the supremacy of the rule of law.



Honourable senators, I wish to thank all those Canadians who have participated in National Law Week, as it reminds us of one of the principles upon which our country was founded.

### WOMEN'S CURLING

**Hon. Mabel M. DeWare:** Honourable senators, last weekend the Canadian women's curling team once again did our country proud by winning the World Women's Curling Championship. I should like to salute not only the champion team, skipped by Kelley Law, but all women curlers in Canada for the important contribution they make to the sport.

Honourable senators, this championship started in 1978, thanks to intensive lobbying of the International Curling Federation. They should have been called the "old boys' club". There were four women, one each from Canada, the United States, Scotland and Sweden. I was pleased to be the Canadian delegate who attended those meetings.

We started in 1975 with a meeting in Vancouver. This was followed by meetings in Perth, Scotland; Duluth, Minnesota; Karlstad, Sweden; and Winnipeg, Manitoba. In Duluth, the committee was chaired by Colin Campbell from Ontario whom some of you may have known. He was a hard taskmaster and was not prepared to have the federation bring women into the world scene. Therefore, we went to Karlstad, Sweden, and bent their arm again. In Winnipeg, in 1978, they finally broke down and agreed that women could have a place in the curling world.

The first women's championship took place in Scotland in 1978. At that time, my pitch to the federation was that the women's championship should take place at the same time as the men's because, with the coverage of the media and for the fans following the sport, it was not practical to have two world championships. However, they disagreed. In 1989, though, 10 years later, we began having joint championships.

Honourable senators, Canadian women's curling has come a long way since I skipped the team that won the Canadian Women's Curling Championship in 1963, which was two years after the championship was founded. The juniors have won a number of titles and the women have won more than half of the world championships.

Curling has since been recognized as an Olympic sport and, as you know, our first Olympic winner was Sandra Schmirler.

Our women curlers have been able to develop world-class skills, thanks, I believe, to the tradition of curling in this country. We have been curling since the 1700s, when General Wolfe's soldiers and Scottish settlers brought the sport to Canada. We have over 1 million curlers in Canada, and more than 1,200 curling clubs.

I wish to add my congratulations to those of Senator St. Germain. I congratulate the Canadian women for bringing curling to this proud state in sport.

**Senator St. Germain:** Hear, hear!

### VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to introduce to you a distinguished visitor in our gallery. It is the Honourable Peter Irniq, Commissioner of Nunavut.

Mr. Commissioner, on behalf of all honourable senators, I wish you welcome here in the Senate.

**Hon. Senators:** Hear, hear!

**Hon. Willie Adams:** Honourable senators, I would like to congratulate the new Commissioner of Nunavut. Peter Irniq is a good friend of mine.

**Senator St. Germain:** You have influence already.

**Senator Adams:** We are not only friends through politics, but we have been good friends who have hunted together out on the land. I will never forget the time we went out caribou hunting and the caribou were far from our community. We both ran out of gas and, therefore, had to walk back home.

I congratulate Peter Irniq, particularly at the one-year anniversary of the new Territory of Nunavut. Mr. Irniq was sworn in as Commissioner of Nunavut just two weeks ago and he has already become very active in his job as Commissioner.

I would also like to thank Senator Losier-Cool for attending the ceremony for the dedication of the Coat of Arms of Nunavut, which took place this morning at 10:30. The syllabics on the top of the coat of arms are in the Inuktitut language. The translation is "Nunavut Our Strength".

• (1430)

## ROUTINE PROCEEDINGS

### PRIVILEGES, STANDING RULES AND ORDERS

#### FOURTH REPORT OF COMMITTEE PRESENTED AND PRINTED

**Hon. Jack Austin:** Honourable senators, I have the honour to present the fourth report of the Standing Committee on Privileges, Standing Rules and Orders concerning the questions of privilege raised by Senator Andreychuk and Senator Bacon.

*(For text of report see today's Journals of the Senate, Appendix "A", p. 531.)*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Austin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## FIFTH REPORT OF COMMITTEE PRESENTED AND PRINTED

**Hon. Jack Austin:** Honourable senators, I have the honour to present the fifth report of the Standing Committee on Privileges, Standing Rules and Orders concerning the question of privilege raised by Senator Kinsella.

(For text of report, see today's Journals of the Senate, Appendix "B", p. 540.)

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Austin, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## CANADA ELECTIONS BILL

## REPORT OF COMMITTEE

**Hon. Lorna Milne,** Chair of the Standing Senate Committee on Legal and Constitutional Affairs, presented the following report:

Thursday, April 13, 2000

The Standing Senate Committee on Legal and Constitutional Affairs has the honour to present its

## FIFTH REPORT

Your Committee, to which was referred Bill C-2, respecting the election of members to the House of Commons, repealing other acts relating to elections and making consequential amendments to other acts, has in obedience to the Order of Reference of Tuesday, March 28, 2000, examined the said bill and now reports the same without amendment.

Respectfully submitted,

LORNA MILNE  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Milne, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## QUESTION PERIOD

## PRIME MINISTER

## POSSIBILITY OF RECALL FROM TRIP TO MIDDLE EAST

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my question is to the Leader of the Government in the Senate.

As his behaviour has been quite unlike the touch of Midas, and more like the adventures in *The Iliad*, when will this government recall the Prime Minister from the Middle East?

**Senator Lynch-Staunton:** Paul Martin won't get him!

**Senator Forrestall:** Send a Sea King for him!

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I believe the Prime Minister's schedule is well known, and we certainly wish him a safe return. However, he has work to do there, and we wish him good luck with his task in that area of the world.

## NATIONAL DEFENCE

## REPLACEMENT OF SEA KING HELICOPTERS

**Hon. J. Michael Forrestall:** Honourable senators, my question is for the Leader of the Government in the Senate.

Most honourable senators will have read this morning, with a little bit of shock and sadness, the difficulties that our Sea Kings are having. Recent news reports stated that the British Navy had to bail Canada out twice during a major NATO exercise last fall. The Canadian Sea Kings sat inoperable. In both cases, the Canadians required the British assistance to help Canadian personnel due to medical emergencies.

With lives hanging in the balance due to the unreliability and unavailability of these aircraft, when will the government take some initiative and issue the order for shipboard replacement helicopters?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, as my honourable friend knows, and we agree, the Sea King helicopters are really at the extended edge of their useful life. Some may debate whether they have gone beyond that. As the senator and I have discussed before, they require a significant amount of maintenance and repair on a regular basis. It has been the policy of the Department of National Defence that when such repairs are done and the equipment is upgraded, no serviceman is sent on a Sea King helicopter mission unless the superiors are absolutely convinced that the helicopter will operate without bringing risk to the operator's safety or, indeed, their lives.

Having said that, I recognize, as does the honourable senator, that these helicopters do need replacement. The Minister of National Defence has indicated repeatedly, and I have repeated his statements in this place. Replacement of the Sea King helicopters is the number one priority for him, along with the submarine replacement program, both of which are now underway. I share the view of the Minister of Defence that we may very soon see underway the replacement process for the Sea King helicopter.



**Senator Lynch-Staunton:** The same one the government cancelled?

**Senator Forrestall:** Honourable senators, my question is very serious. I do not mean to become difficult with respect to this matter, but we now know that 40 per cent of the missions fail because of inoperability, mechanical difficulties and an inability to fly in certain types of weather. We have been putting off this decision since 1994! The cost of doing so is much more than \$700 million or \$800 million. I can construct on paper for honourable senators that this decision by the Prime Minister of this country cost Canadians \$1 billion and change.

Must we wait until the ultimate tragedy takes place before we do the simple thing? Far better for me to plead with the government to tie up the ships and fire the navy because of benign neglect. That is what the government has done. However, in doing that, the government has placed the lives of Canadian men and women at some considerable jeopardy. I ask the Leader of the Government in the Senate to convey my message and my plea to the minister.

• (1440)

We are well into the year 2000 and we should be flying the replacements. They should have been airborne by now. For the sake of these men and women, will we, at least, order the replacements?

**Senator Boudreau:** Honourable senators, the government has committed itself and, indeed, has begun programs for major capital replacements of equipment, one of them being the submarine program. We will have new submarines.

**Senator Lynch-Staunton:** Not new, used.

**Senator Boudreau:** We will also have new helicopters for search and rescue. There is no question that this piece of equipment has to be replaced. We have been assured by senior military personnel of its operational capability. Indeed, I mentioned to the honourable senator, following some of his interventions, that I visited the facility that does repair and upkeep. I raised his concerns literally on the shop floor. I am assured that the repairs and upkeep are being done and that no one is being sent on a mission which would put lives in danger.

Does the equipment require a lot more repair and maintenance than we would like? Yes. The minister has made it his top priority, and I anticipate that the program will move forward in the near future.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a supplementary question. If the minister has just admitted to the Senate that the equipment needs replacement, why did his government cancel the contract?

**Senator Lynch-Staunton:** In 1994. You were not there.

**Senator Boudreau:** At the time, the view certainly was that there would be a saving. In fact, the question was whether or not

that particular type of equipment was appropriate. Huge military purchases such as those require careful assessment as to whether or not the taxpayers of Canada are purchasing the appropriate piece of equipment to do the job.

## UNITED NATIONS

POSSIBILITY OF SECURITY COUNCIL RESOLUTION TO ABSOLVE  
LIEUTENANT-GENERAL ROMÉO DALLAIRE OF ALLEGED  
MISCONDUCT DURING ASSIGNMENT TO RWANDA

**Hon. Douglas Roche:** Honourable senators, this question is to the Leader of the Government in the Senate.

Tomorrow, Foreign Affairs Minister Axworthy, on behalf of Canada, will chair a meeting of the United Nations Security Council on the 1994 genocide in Rwanda and how to avoid such catastrophes in the future. This occurs at a time when one of Canada's distinguished military figures, Lieutenant-General Roméo Dallaire, who served the UN in Rwanda at that time, is entering retirement.

Yesterday, in the House of Commons, Defence Minister Eggleton said that it was not just the United Nations itself but the countries that contribute to the UN that failed General Dallaire when he called out for help.

I should like to ask the minister if the Senate could join in lifting the cloud over General Dallaire's head by prompting a Canadian statement at tomorrow's meeting of the Security Council, so that a truly fine, compassionate man and dedicated servant to peacekeeping may enter his retirement years with the knowledge that all parliamentarians applaud him and wish him well?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I will bring that request without delay, given the short time frame, to the attention of the appropriate authorities and ask that it be considered.

## NATIONAL DEFENCE

POSSIBILITY OF SUSPENSION  
OF ANTHRAX VACCINATION PROGRAM

**Hon. Michael A. Meighen:** Honourable senators, my question is to the Leader of the Government in the Senate.

As the minister is no doubt aware, the U.S. House subcommittee on national security has recommended that the anthrax vaccination program used by the American military — the same vaccination program used by the Canadian military — be suspended. The vaccine in question has not been tested against inhaled airborne spore, which is the most likely form of attack. As well, the U.S. Federal Drug Administration has shut down the sole anthrax vaccine manufacturer in North America, Biopart, because the manufacturers' facilities do not meet FDA approval.

This summer, the HMCS *Calgary* will go to the Persian Gulf. Will personnel on the *Calgary* be vaccinated against anthrax? If so, where will the vaccine come from? Does the navy intend to use the same Bioport vaccine which has been banned in the U.S. because it does not meet government regulations?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for raising this issue. I do not have the specific details of the program for those particular service people. The government will ensure that whatever health precautions are necessary will be put into effect.

To reply specifically to the honourable senator's question, I shall seek the information from the Minister of National Defence, ask the questions that are raised here, and respond at a future date.

## AGRICULTURE AND AGRI-FOOD

### FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN— POSSIBILITY OF ASSISTANCE

**Hon. Terry Stratton:** Honourable senators, my question is addressed to the Leader of the Government in the Senate. I refer again to the farmers in southwestern Manitoba and southeastern Saskatchewan. Once again, I must claim that the answers to my questions are found in the newspapers.

In the *Winnipeg Free Press*, Friday, April 7, the Minister of Public Works and Government Services for the Province of Manitoba, Steve Ashton, stated they were very disappointed. The provincial government had estimated that the federal government owes the province about \$39 million in disaster assistance. Mr. Ashton said:

...it appeared Ottawa was going to ante up, however a deal was nixed in a March 29 letter from Art Eggleton, federal minister responsible for emergency preparedness.

Ashton said the letter indicated that weed control, loss of applied fertilizer and forage restoration are not eligible under the Disaster Financial Assistance Arrangements.

The estimated costs are \$43 million.

Is that accurate, sir?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I do not have the specific information with respect to the honourable senator's quote from a letter of a minister in Manitoba. I will pass that information on and see if I can have it verified. I am not sure, given that the quote comes from the provincial minister, whether the federal minister will be able to verify specific cost figures. I certainly have no problem asking. If he does have those figures, I will confirm them for the honourable senator.

**Senator Stratton:** I believe I asked the Leader of the Government in the Senate this question over a month ago. As a matter of fact, he informed me, I think about February 28, that he had given me a written response. Yet we have rejection letters coming a month later. Surely to goodness, the Leader of the

Government in the Senate can be more open and direct with us. If that is to occur, at least inform us on or before the day that it does occur so that I may be aware, rather than having to read the answer in the newspaper. Why should I have to do that? Why should any senator have to do that?

We have concerns for those farmers. They are legitimate concerns. It proves once again the minister just does not seem to care.

I will refer to an article from today's *Leader-Post* of Regina.

Farmers in the province's southeast will continue to push for compensation for lost inputs and land maintenance for flooded land last spring, despite a rejection by Ottawa last week.

Can you confirm that again?

• (1450)

**Senator Boudreau:** Honourable senators, the information I tabled in response to the question remains true and complete to the best of my knowledge to this date.

**Senator Stratton:** Honourable senators, I should like to put on the record what the President of the Southeastern Saskatchewan Rural Municipalities Association had to say about this. He stated:

They don't seem to want to declare the area a disaster. ...That was kind of another slap in the face. We don't seem to be important enough when we hit some of these disasters.

That is how the people feel down in that part of the world.

**Senator Boudreau:** Honourable senators, I would simply say that decisions of this sort are made on established criteria. In fact, the assistance in the tabled information was made available. If some people are disappointed at any level of assistance, I can understand that; but, in fact, that remains the case. I can only repeat the information that I gave to the honourable senator previously.

**Senator Stratton:** That is wonderful for those folks. Wonderful. They fall between the cracks again.

## INDIAN AFFAIRS AND NORTHERN DEVELOPMENT

### AUDITOR GENERAL'S REPORT—SUBSTANDARD QUALITY OF NATIVE EDUCATION

**Hon. Gerry St. Germain:** Honourable senators, my question is to the Leader of the Government in the Senate. Recently, the Auditor General reported that there are approximately 117,000 native children in schools that are funded by, I would presume, DIAND and the federal government to the tune of approximately \$1.3 billion. He said that the education they are receiving is substandard and does not allow them to be competitive in our society. Is the government leader aware of that?



**Hon. J. Bernard Boudreau (Leader of the Government):**

Honourable senators, I am aware in summary of the Auditor General's comments in that area. As the honourable senator knows, the Auditor General's rather extensive report dealing with seven or nine separate areas in great detail was tabled this week — the day before yesterday, I believe. I am not completely familiar with all the details of each of those areas, but there were criticisms made by the Auditor General with respect to the approach in the area of native education.

**Senator St. Germain:** Then I must ask: Will the government ignore, as it has in the past, the recommendations of the Auditor General? If not, what will it do to rectify this unacceptable situation for our native peoples in this country? Is the minister aware of any immediate action or game plan being developed to deal with this situation? The minister will know that we have been told many times in various committee hearings on aboriginal issues that education is critical in improving the plight of our native peoples.

**Senator Boudreau:** Honourable senators, the department will no doubt review that report thoroughly and will take it very seriously. I know the department agrees, without question, that education for First Nations people, whether it occurs on a reserve or in the regular school system, is exceptionally important. Actually, elementary and secondary education is the department's largest single program allocation within its budget.

**Senator St. Germain:** How many dollars have been allocated?

**Senator Boudreau:** With an estimated budget of \$995 million in 2000-2001, almost \$1 billion, it is a substantial amount.

**Senator Lynch-Staunton:** Did the government leader read the Auditor General's report?

**Senator Boudreau:** Honourable senators, there is a need to work with communities, with aboriginal leaders and within the educational process, both on and off reserves, to improve performance. However, I caution that we must do so in partnership with the aboriginal communities themselves.

**DELAYED ANSWERS TO ORAL QUESTIONS****Hon. Dan Hays (Deputy Leader of the Government):**

Honourable senators, I have a response to a question raised in the Senate on December 14, 1999, by Senator Oliver regarding the allocation of Canada Pension Plan credits in marriage breakups; a response to a question raised in the Senate on February 10, 2000, by Senator Cochrane regarding the Millennium Scholarship Foundation, disbursement of scholarships; a response to a question raised in the Senate on February 23, 2000, by Senator Cochrane regarding the Millennium Scholarship Foundation, disbursement of funds as between operational expenses and grants; a response to a question raised in the Senate on March 28, 2000, by Senator Forrestall regarding the report on restructuring reserves, viability of militia; and response to a question raised in the Senate on March 29, 2000, by Senator

Forrestall regarding the rescue operations at sea, condition of fourth Sea King helicopter assigned to task force.

**FINANCE****ALLOCATION OF CANADA PENSION PLAN CREDITS  
IN MARRIAGE BREAKUPS**

*(Response to question raised by Hon. Donald H. Oliver on December 14, 1999)*

The 1997 paper, *Securing the Canada Pension Plan: Agreement on Proposed Changes to the CPP*, which set out the federal-provincial agreement on important changes to sustain the Canada Pension Plan, noted that splitting of CPP credits between spouses was an important issue that needed further review. It noted concern about the low take-up of existing credit-splitting provisions.

The CPP provides for the splitting of CPP pension credits on marriage breakdown. Credit-splitting is mandatory on divorce and by application in cases of separation within legal and common law unions. These provisions reflect the fact that CPP credits are "assets" that are earned jointly by both members of a couple. However, to respect provinces' jurisdiction over family law, the CPP legislation provides provinces with the choice, under provincial family laws, of allowing couples to opt out of the credit-splitting provision.

Where credit-splitting is mandatory for legally married couples who are divorcing, it has in practice proved impossible to make credit-splitting automatic, as there is no automatic mechanism for providing the CPP administration with necessary information about divorcing couples. For reasons that are generally unknown, most divorcing couples do not inform the CPP administration of their divorce, and as a result, only about 16 per cent of divorcing couples have their credits split.

Following up on their 1997 commitment, the federal and provincial governments have been exploring practical ways to increase the take-up of credit-splitting. At a meeting of federal and provincial Ministers of Finance on December 9, 1999, the federal and Manitoba governments agreed to implement a pilot project in Manitoba. The pilot project will provide for the automatic forwarding of information required to effect credit splits from the provincial courts to the CPP administration. The two governments are in the process of establishing in detail the parameters of the pilot project, including legislative, regulatory, administrative, and communications issues in both jurisdictions. The pilot project will be evaluated for relevance to other jurisdictions.

## HUMAN RESOURCES DEVELOPMENT

### MILLENNIUM SCHOLARSHIP FOUNDATION— DISBURSEMENT OF SCHOLARSHIPS

*(Response to question raised by Hon. Ethel Cochrane on February 10, 2000)*

Regarding questions on the Canada Millennium Scholarships initiative as to how much money has been given directly to students and how much has gone to provincial governments, Canadian students received some \$285 million in additional financial assistance for the 1999-2000 academic year.

The Foundation has signed agreements with provincial and territorial governments for the delivery of the scholarships through their student financial assistance programs. These agreements provide that the bulk of the Canada Millennium Scholarships Foundation's funds go to students. Provinces have committed to reinvest any savings they accrue back into the education system.

Under these agreements, the Foundation will reimburse the jurisdictions for a portion of the administrative costs relating to the delivery of the scholarships. In addition to a total one-time cost of \$1.23 million to upgrade information systems, these payments amount to a total annual sum of approximately \$2.5 million only. Students will clearly be receiving the bulk of the Foundation's funds.

As for the question of how many students thus far have refused to accept these scholarships, as of February 9, 2000, out of some 100,000 scholarship recipients, only 8 students had not accepted their scholarship. A key reason for non-acceptance was the taxation of scholarships.

The concerns of students regarding the taxation of scholarships were clearly addressed in Budget 2000, when the tax exemption for income from scholarships, fellowships and bursaries was increased from \$500 to \$3,000. As a result of this measure, the average \$3,000 scholarship will now be exempted from taxation.

### MILLENNIUM SCHOLARSHIP FOUNDATION—DISBURSEMENT OF FUNDS AS BETWEEN OPERATIONAL EXPENSES AND GRANTS

*(Response to question raised by Hon. Ethel Cochrane on February 23, 2000)*

Regarding questions on the Canada Millennium Scholarship Fund, requesting a projection as to how much of the original scholarship endowment will be diverted away from Canadian students in need over the full 1998-2010 period, the Canada Millennium Scholarship Foundation has committed to keeping administrative costs as low as

possible in order to maximize the funds available to students.

The Foundation has committed to keeping its annual operating budget between \$8 million and \$10 million, representing only 3 to 4 per cent of the annual spending. This is well below the initial projection of an allocation of 5 per cent for administrative costs.

In its first year of operations, the Foundation accomplished a great deal. For instance, a portion of the Foundation's expenditures in the first six months were used to undertake extensive consultations with provincial and territorial governments, student associations and other representatives of the learning community. These consultations helped the Foundation decide how best to meet the needs and expectations of students in disbursing the funds.

It is important to note that significant costs were also incurred in establishing the Foundation's investment portfolio. Expenses related to the management of the Foundation's \$2.5 billion Fund certainly paid off. As a result of this investment, the Foundation's funds increased by \$64.5 million.

With regards to the question: "could this scholarship program not be better managed within the existing Canada Student Loans Program (CSLP), or some other program", it is important to note the following.

- The Government of Canada has chosen to celebrate the new millennium by investing in the knowledge and skills of Canadians and not in bricks and mortar, like many other countries have done.
- The Canada Millennium Scholarship Foundation was legislated a specific mandate to help Canadians of all ages access post-secondary education and manage their student debt through the award of scholarships.
- In collaboration with provincial and territorial government and by building on existing programs of student financial assistance, the Foundation has succeeded in avoiding costly duplication and in granting the first scholarships to students well ahead of schedule.
- Through its Excellence Awards program, the Foundation will also recognize and encourage excellence in Canadian students, including academic achievement.
- Awarding scholarships is beyond the mandate of programs such as the CSLP, whose mandate is to provide loans, not scholarships.



It is also important to note that as an independent body, the Foundation will carefully invest the \$2.5 billion endowment in order to generate additional funds for students.

The honourable senator has been provided with a copy of the Foundation's 1998 Annual Report, as requested in her question.

## NATIONAL DEFENCE

### REPORT ON RESTRUCTURING RESERVES— VIABILITY OF MILITIA

*(Response to question raised by Hon. J. Michael Forrestall on March 28, 2000)*

The Reserves are an important pillar of the Canadian Forces (CF) and play a wide variety of roles both at home and abroad. The Department of National Defence remains committed to developing a Reserve that is viable, sustainable, relevant to current operational requirements, and an essential part of the CF force structure. Through restructuring, the CF also hopes to take advantage of the enormous potential that resides in the Reserves to enhance the operational capability of the CF.

The recent press reports indicating units declared non-viable will be closed are based on documents containing only preliminary information that were released through Access to Information. Concluding that the units described as non-viable will be closed is both unfair and wrong as unit viability evaluations are only one piece of the puzzle. Reserve restructuring is a complex matter with many factors to consider and no decision concerning restructuring — including whether units will be assigned new roles — has been made.

Much work needs to be done and the Minister of National Defence asked the Honourable John Fraser — the Chair of the reconstituted Monitoring Committee — to provide advice on the Reserve restructuring process. The Department is examining forward-looking, operationally focused proposals for reserve restructuring that are being considered by the CF's senior leaders. The goal of this restructuring process is to make the Reserves more relevant to the types of operations in which the CF is most likely to be engaged.

### RESCUE OPERATION AT SEA—CONDITION OF FOURTH SEA KING HELICOPTER ASSIGNED TO TASK FORCE

*(Response to question raised by Hon. J. Michael Forrestall on March 29, 2000)*

All Canadians should be extremely proud of the skills and professionalism demonstrated by the men and women who

participated in this rescue operation. Thirteen lives were saved because the Canadian Forces was able to respond quickly and effectively. The Naval Task Group, comprising of five ships and four embarked Sea King helicopters, was en route to naval exercises in the Caribbean when the tragic incident occurred. After the Panamanian ship called for assistance, four of the Canadian warships redirected their course and proceeded to the distressed ship at best speed to offer assistance and participate in the rescue.

As soon as the Panamanian ship was within the Sea King's operational range, two Sea Kings were dispatched. They flew approximately 100 nautical miles and reached the scene of the incident in the middle of the night. Twelve crew members were rescued from the water and a thirteenth survivor was picked up by HMCS *Halifax*. In addition to the Sea Kings, a CF Hercules aircraft as well as an Aurora long-range patrol aircraft deployed from 14 Wing Greenwood to assist in the operation.

The two other Sea Kings did not participate in the nighttime rescue operation as their onboard doppler radars were unserviceable. Although the two helicopters *could* have flown at night, the doppler radar problem would have prevented the helicopters from hovering safely over the particularly stormy sea, thereby putting the lives of their crews at unnecessary risk.

One of the Sea Kings did join the search operation the next morning. The fourth helicopter, however, was held in reserve on its ship and was available for operations if needed.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, before we proceed to further discussion, I remind everyone that, under the order of the house, I will be obliged to stop all debate at 3:15 to proceed with the votes.

### NISGA'A FINAL AGREEMENT BILL

#### THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, to give effect to the Nisga'a Final Agreement;

And on the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the Bill be not now read a third time, but that it be read a third time this day six months hence:

And on the motion in amendment of the Honourable Senator Sparrow, seconded by the Honourable Senator DeWare, that Section 3 of the Bill be amended by adding the word "not" following the word "is".

The amended Section 3 will therefore read:

"3. The Nisga'a Final Agreement is not a treaty and a land claims agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982."

And on the motion in amendment of the Honourable Senator Sparrow, seconded by the Honourable Senator DeWare, that Section 27 of the Bill be amended by adding the following:

"which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a Agreement."

The amended Section 27 will therefore read:

"The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council, which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga'a Agreement."

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, first, I commend and thank Senator Austin as chairman, Senator St. Germain as deputy chairman, and all members of the committee for the many hours — indeed, long days — they spent in an exhaustive and most valuable series of meetings on Bill C-9.

I listened to a number of the hearings and have read many of the transcripts. If nothing else, once again we have solid evidence of the Senate's ability to get to the heart of an issue, even one as complex and as controversial as the one before us. This is in sharp contrast to the usually superficial manner with which the other place examines legislation, as was certainly the case with Bill C-9.

Honourable senators, I should like to quote from the Minister of Indian Affairs at the end of his first appearance before the committee. He said:

...we had a lot of difficulty in the other place in getting down to the facts of the treaty. We were very annoyed about the fact that we did not get to talk about the particular clauses and the chapters and what they mean in the other

place. That was a disservice to Canadians and British Columbians.

Had the bill been introduced in the Senate first, the other place would have had the advantage of our deliberations in sharp contrast to theirs, which are of little, if any, value to us.

Before giving reasons for supporting Senator St. Germain's amendment, I hope that Senator Austin will, at the earliest opportunity, reconsider his categorizing it an "infamous". The Oxford dictionary on the clerk's table defines "infamous" as "of ill fame or repute; notorious for badness of any kind; held in infamy or public disgrace." Whatever one may think of the amendment, hopefully Senator Austin will agree on reflection that terming it "infamous" was somewhat excessive, to say the least.

Let me repeat at the outset that anxiety over Bill C-9 has nothing to do with aboriginal self-government per se. It was a Conservative government which established the Royal Commission on Aboriginal Peoples. It was a Conservative government which urged Canadians to approve in a referendum the inherent right to self-government in the 1999 Charlottetown accord, an accord which sadly was rejected, and no less so than by 62 per cent of the aboriginal people themselves, according to Elections Canada.

Senator Austin has invoked the rejected Charlottetown accord, section 45 in particular, to justify Bill C-9. Last week, after I said that we were being asked to sanction a separate entity that has never happened before in Canada, Senator Austin replied as follows:

Those last few words are absolutely correct. We are creating something new here, and this is a form of aboriginal government that will be constitutionally protected under section 35. That is seen as a desirable step, certainly by many on this side, and I hope many on the side opposite. It was a step that was described in full in section 45 of the Charlottetown Agreement.

• (1500)

Later, he went on to say:

The government of former prime minister Brian Mulroney made that proposal to the people of Canada with the agreement of all premiers. It is an issue that should cause no fear or concern to senators on that side. The policy comes from the honourable senator's party and from former prime minister Mulroney.

To have the government, through Senator Austin, justify the Nisga'a agreement by invoking Conservative policy should not surprise anyone, as this has been done repeatedly by the Liberal government over the last seven years, but that he do so despite the fact that it was rejected through a referendum should trouble us all.



No stronger rejection of the accord took place than in Senator Austin's own province of British Columbia, where, as Senator Carney reminded us last week, the majority in every single riding but one voted against the accord, including a majority of aboriginals.

Senator Sibbeston echoed Senator Austin's argument last Thursday, when he said:

In March 1992, a joint parliamentary report recommended the inherent power of self-government be entrenched but in a manner consistent with a view that section 35 of the Constitution might —

I underline the word "might".

— already recognize that right.

A little later, in speaking of the Charlottetown accord, he said:

We do not know precisely which parts of the accord the voters rejected. Nevertheless, it shows the government thinking and the support for aboriginal self-government which has grown over the years.

The difference of opinion, then, is not related to support for the inherent right of self-government but to whether it is constitutional as spelled out in a Nisga'a treaty. Our two colleagues invoke the spirit of deliberations over the years to claim that this inherent right is found at least *de facto* in section 35. I join with others in claiming that that is just not enough, because the whole history of section 35 and what follows from it can only lead one to conclude that its authors did not intend to include inherent self-government.

On Tuesday, Senator Buchanan, in no uncertain terms, declared Bill C-9 unconstitutional. As a participant in every federal-provincial constitutional conference in the early 1980s, he told us unequivocally that no one around the table, beginning with Prime Minister Trudeau himself, ever accepted that section 35 was to be interpreted as including the inherent right of self-government and that this view was shared by the aboriginals themselves.

No parliamentarian can dismiss such testimony from one who not only was there but who was an active participant in all discussions on section 35.

I would like to pick up where Senator Buchanan left off and summarize developments after the amendment adding subsections 3 and 4 to section 35 was agreed to in March 1983.

In 1983, an amendment was sent to our Legal and Constitutional Affairs Committee — not a special committee, by the way. That committee was chaired by our former colleague the Honourable Senator Joan Neiman.

A review of the evidence given to that committee is instructive in determining the meaning of section 35 as amended. The then deputy secretary of the cabinet for federal-provincial relations, Pierre Gravel, testified that there were 19 items on the agenda for

that meeting, including self-government. He then informed the committee that aboriginal government was to be on the agenda for the March 1984, constitutional conference.

Both the late Mark McGuigan, then minister of Justice, and John Munro, the then minister of Indian and Northern Affairs, testified that self-government was not within section 35 as amended.

This view is given even further support when one refers to the Report of the Special House of Commons Committee on Indian Self-Government in Canada, known as the Penner report and referenced by Senator Sibbeston. This special committee reported in October 1983. It was a significant committee for a number of reasons, not least for the depth of its analysis of the subject of self-government, which benefitted, through a special order of the House, by having representatives of the Assembly of First Nations, the Native Women's Association of Canada, and the Native Council of Canada participating as full members of the committee.

Chapter 11 of the report is entitled "Structures and Powers of Indian First Nation Government" and it recommends that a statutory method for achieving self-government be put in place as section 35 did not contain the constitutional basis for self-government. The quote from this report that was used by Senator Sibbeston in his speech on Bill C-9 comes from a chapter headed, "Scope of Powers," which is preceded by a lengthy discussion from which I have just quoted on the legislative means necessary to achieve self-government because the proper constitutional basis was not and is not in place.

In June 1984, this legislative view is given further credit when John Munro, still Minister of Indian Affairs and Northern Development, introduced at first reading Bill C-52, the Indian Self-Government Act, establishing a legislative scheme or framework whereby Indian groups or nations who wished to become self-governing could attain self-government through a legislative process. Obviously, the bill was tabled to legislate a form of self-government that section 35 does not permit.

Of course, the next major constitutional proposal was the Meech Lake Accord, at a time when the aboriginal peoples of Canada complained repeatedly that they had been left out of the process. Both the report of the special joint committee on the accord and the report of the Senate Committee of the Whole urged the government to put aboriginal self-government back on the negotiating agenda for future constitutional conferences.

Therefore, at that time, there was still no support for section 35 containing the constitutional base for aboriginal self-government.

Senator Sibbeston mentioned in his remarks on Thursday the report of the Beaudoin-Dobbie committee, the Special Joint Committee on a Renewed Canada. Just to set the record straight, that committee did hear witnesses who stated that the inherent right of self-government may already be entrenched in section 35; nevertheless, the committee recommended that the inherent right of aboriginal peoples to self-government be entrenched through a constitutional amendment.

Of course, the last document to which I will refer is the 1992 Charlottetown Agreement, which, while representing the unanimous view of first ministers and the representatives of the Assembly of First Nations, was rejected in a referendum, as we all know.

It proposed a constitutional amendment in the form of a new subsection to section 35 that recognized the inherent right to self-government so that aboriginal government could become a third order of government in Canada. This would have been the amendment upon which the Nisga'a government as set out in the Nisga'a Final Agreement would have been based.

From this quick summary of constitutional developments since 1982, one can only conclude that those who were in government and at the conferences and committee hearings, as well as those from the aboriginal community, clearly believed that section 35 does not contain the inherent right of self-government. If it is to be established, it must be established by way of amendment, as proposed in the Charlottetown Agreement. Otherwise, it will be up to the courts to determine the constitutional legitimacy of the governance structures set out in the Nisga'a Final Agreement.

What is being proposed here, honourable senators, is an ersatz constitutional amendment through legislation, based on a most questionable interpretation of section 35. As in Bill C-20, the government is resorting to a legislative solution when it should be enshrining certain basic values in the Constitution. It did in the case of Term 17 and the change in the Quebec school systems only because the bilateral amendment formula could be applied. When it came to proclaiming Quebec a distinct society, however, as well as reinstating its veto and extending it to other regions, it did so by House of Commons resolution and legislation, respectively, rather than through amendment, as other more difficult constitutional formulas would have had to be applied.

I detect the same pattern here. Section 35 applies, claims the government, and if anyone disagrees, challenge the bill in court. In other words, it cannot be bothered reopening the Constitution because that is ground upon which no government concerned strictly with self-preservation will ever tread. Instead, it introduces a bill, and if its constitutionality is in doubt, let those who may want to pursue the argument take it to the courts.

• (15:00)

I simply do not accept that any bill that is so fundamentally challenged as is Bill C-9 should be voted on before a court decision on the challenge has been rendered. Parliament is the first to complain about the intrusion of the courts on its jurisdiction; yet, it is Parliament that invites the courts to do so by debating and approving legislation it knows is seriously flawed. I could cite the Pearson bill, the Electoral Boundaries Redistribution Act, Bill C-78, two tobacco bills, the gun control

bill, and the bill in effect banning MMT. Tabled before us today is Bill C-2, the election bill, which has just been reported back from committee, containing restrictions on third-party financing that have already been before the courts and will be again should the bill become law.

Bill C-9, I fear, is being called on to suffer the same fate as a number of its predecessors, regardless of the ultimate verdict. Making Bill C-9 law before major objections are confirmed or denied, whatever the case may be, will cast a pall as its implementation proceeds. It will discourage entering into similar agreements with other aboriginal nations. Should the worst be realized after years of argumentation, all the goodwill and extraordinary efforts that after some 20 years have led to this unprecedented agreement will have been largely for naught.

Other countries resolve legal difficulties as those facing us today by referring them to constitutional courts before their legislatures take a final decision. The suggestion that Canada establish one of its own has been made many times in the past, but nothing has come from it. Perhaps the time is right to consider the idea.

Meanwhile, a reference to the Supreme Court is available, but the federal government stubbornly refuses to take advantage of it. It seems that references are made only when political capital ensues, such as in the case of the Quebec secession reference, which was highly hypothetical and removed from reality.

Bill C-9 is a landmark bill. It is much more important than Bill C-20, as it is intended to return some sense of pride and self-esteem to members of Canadian society too long neglected and dismissed as second-class citizens. We will be doing them a disservice by voting this bill with so many uncertainties surrounding its legality. Far better be it to clear these up in the time it will take to do so than to have it applied with the knowledge that much if not all of it will be struck down by the courts.

The principle of Bill C-9 is not being challenged — far from it. It is a conviction that it stays beyond constitutional limitations that happen to be the fundamental law of this land. To pass it in its present form is to invite years of litigation, misunderstanding and mistrust, as well as to make its application in whole or in part subject to possible repeal.

To take the time needed to resolve the basic constitutional issues will allow, once these are out of the way, an agreement with full legitimacy and with overwhelming support, certainly from this side, whose commitment to the inherent right of self-government for aboriginals remains as strong as ever.

To vote Bill C-9 into law, as we are asked to do this afternoon, is to initiate a period of great uncertainty and constant legal challenge, which can only be to the detriment of the Nisga'a and all those who aspire to similar treatment.



I commend the representatives of the Nisga'a Nation here with us today for having gone through this ordeal and for displaying the patience they have shown through these debates. I assure them that, as much as we are dissatisfied with the content of the bill and the legal challenges that it will face, we are all in favour of the inherent right of self-government. We only wish it were done in proper form. I hope that the Senate, in its sober second thought, will act accordingly.

**The Hon. the Speaker:** Honourable senators, it being 3:15, pursuant to the order adopted by the Senate on Tuesday, April 11, 2000, it is my duty to interrupt the proceedings so that all questions necessary to dispose of the third reading of Bill C-9 shall be put forthwith and without further debate or amendment.

The question before the Senate, honourable senators, is the motion by the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, for the third reading of Bill C-9, and the motion in amendment of the Honourable Senator St. Germain, P.C., seconded by the Honourable Senator Andreychuk, that the bill be not now read a third time, but that it be read a third time this day six months hence.

Will those honourable senators in favour of the motion in amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen.*

**The Hon. the Speaker:** We will have a standing vote. Please call in the senators. There will be a 15-minute bell.

I remind honourable senators that the subsequent amendments will be in sequence, but I will allow enough time between each so that any honourable senator who wishes to leave the chamber may do so. However, there will be no further 15-minute bells. The vote will take place at 3:30.

• (1530)

Motion in amendment of the Honourable Senator St. Germain negated on the following division:

## YEAS

### THE HONOURABLE SENATORS

Andreychuk	Kelleher
Atkins	Keon
Beaudoin	Kinsella
Berntson	LeBreton
Bolduc	Lynch-Staunton
Buchanan	Meighen
Carney	Murray
Cochrane	Nolin
Cogger	Roberge
Cohen	Robertson
Comeau	Rossiter
DeWare	Simard
Doody	Sparrow
Forrestall	Spivak
Grimard	St. Germain
Johnson	Stratton—32

## NAYS

### THE HONOURABLE SENATORS

Adams	Kroft
Austin	Losier-Cool
Bacon	Maheu
Banks	Mahovlich
Boudreau	Mercier
Bryden	Milne
Callbeck	Pearson
Carstairs	Pépin
Chalifoux	Perrault
Christensen	Perry Poirier
Cook	Poulin
Cools	Poy
Corbin	Robichaud
Fairbairn	(L'Acadie-Acadia)
Ferretti Barth	Robichaud
Finnerty	(Saint-Louis-de-Kent)
Fraser	Roche
Furey	Rompkey
Gauthier	Ruck
Gill	Sibbeston
Graham	Stollery
Hays	Taylor
Hervieux-Payette	Watt
Joyal	Wiebe—47
Kenny	

## ABSTENTIONS

## THE HONOURABLE SENATORS

Pitfield  
Rivest—2

**The Hon. the Speaker:** Honourable senators, there are two further amendments. If there are any honourable senators who wish to leave the Senate, will they please do so now? If not, we will proceed with the further amendments.

The next amendment is by the Honourable Senator Sparrow, seconded by the Honourable Senator DeWare:

That Section 3 of the Bill be amended by adding the word "not" following the word "is".

The amended Section 3 will therefore read:

"3. The Nisga'a Final Agreement is not a treaty and the land claims agreement within the meaning of Sections 25 and 35 of the Constitution Act, 1982."

Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

Will those in favour of the amendment, please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those opposed to the amendment, please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen.*

Motion in amendment of the Honourable Senator Sparrow negatived on the following division:

## YEAS

## THE HONOURABLE SENATORS

Simard  
Sparrow—2

## NAYS

## THE HONOURABLE SENATORS

Adams  
Andreychuk  
Atkins  
Austin  
Bacon  
Banks  
Beaudoin  
Berntson  
Bolduc  
Boudreau  
Bryden  
Buchanan  
Callbeck  
Carney  
Carstairs  
Chalifoux  
Christensen  
Cohen  
Comeau  
Cook  
Cools  
Corbin  
Doody  
Fairbairn  
Ferretti Barth  
Finnerty  
Forrestall  
Fraser  
Furey  
Gauthier  
Gill  
Graham  
Grimard  
Hays  
Hervieux-Payette  
Johnson  
Joyal  
Kelleher

Kenny  
Keon  
Kinsella  
Kroft  
LeBreton  
Losier-Cool  
Lynch-Staunton  
Maheu  
Mahovlich  
Meighen  
Mercier  
Milne  
Murray  
Nolin  
Pearson  
Pépin  
Perrault  
Perry Poirier  
Pitfield  
Poulin  
Poy  
Robertson  
Robichaud  
(*L'Acadie-Acadia*)  
Robichaud  
(*Saint-Louis-de-Kent*)  
Roche  
Rompkey  
Rossiter  
Ruck  
Sibbeston  
Spivak  
St. Germain  
Stollery  
Stratton  
Taylor  
Watt  
Wiebe—74

## ABSTENTIONS

## THE HONOURABLE SENATORS

Cogger  
DeWare  
Rivest  
Roberge—4



**The Hon. the Speaker:** If there are any honourable senators who wish to leave the chamber before I proceed to the last amendment, please do so. The numbers will be the same, then.

• (1540)

Honourable senators, this is the last amendment to the main motion. The question before the Senate is the motion in amendment moved by the Honourable Senator Sparrow, seconded by the Honourable Senator DeWare:

That Section 27 of the bill be amended by adding the following:

“which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga’a Agreement.”

The amended Section 27 will therefore read:

“The provisions of this Act come into force on a day or days to be fixed by order of the Governor in Council, which day shall not be earlier than the date upon which the Supreme Court of Canada pronounces on the validity of the Nisga’a Agreement.”

Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motion in amendment please say “yea”?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion in amendment please say “nay”?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the “nays” have it.

*And two honourable senators having risen.*

**The Hon. the Speaker:** Call in the senators. We will proceed with a recorded vote immediately, as per agreement.

Motion in amendment of the Honourable Senator Sparrow negated on the following division:

## YEAS

### THE HONOURABLE SENATORS

Atkins	Kinsella
Buchanan	LeBreton
Carney	Lynch-Staunton
Cogger	Meighen
Cohen	Murray
Comeau	Nolin
DeWare	Roberge
Doody	Robertson
Forrestall	Rossiter
Grimard	Simard
Kelleher	Sparrow
Keon	Stratton—24

## NAYS

### THE HONOURABLE SENATORS

Adams	Kenny
Andreychuk	Kroft
Austin	Losier-Cool
Bacon	Maheu
Banks	Mahovlich
Beaudoin	Mercier
Bolduc	Milne
Boudreau	Pearson
Bryden	Pépin
Callbeck	Perrault
Carstairs	Perry Poirier
Chalifoux	Poulin
Christensen	Poy
Cook	Robichaud
Cools	(L'Acadie-Acadia)
Corbin	Robichaud
Fairbairn	(Saint-Louis-de-Kent)
Ferretti Barth	Roche
Finnerty	Rompkey
Fraser	Ruck
Fury	Sibbeston
Gauthier	Spivak
Gill	Stollery
Graham	Taylor
Hays	Watt
Hervieux-Payette	Wiebe—51
Johnson	

## ABSTENTIONS

### THE HONOURABLE SENATORS

Berntson	Rivest
Joyal	St. Germain—5
Pitfield	

**The Hon. the Speaker:** Honourable senators, we are back to the main motion. It was moved the Honourable Senator Austin, P.C., seconded by the Honourable Senator Gill, that Bill C-9 be now read a third time.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motion in amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion in amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion the "yeas" have it.

*And two honourable senators having risen.*

**The Hon. the Speaker:** Call in the senators. We will have a standing vote immediately, as per agreement.

Motion agreed to and bill read third time and passed on the following division:

#### YEAS

##### THE HONOURABLE SENATORS

Adams	LeBreton
Austin	Losier-Cool
Bacon	Maheu
Banks	Mahovlich
Boudreau	Mercier
Bryden	Milne
Callbeck	Pearson
Carstairs	Pépin
Chalifoux	Perrault
Christensen	Perry Poirier
Cook	Pitfield
Cools	Poulin
Corbin	Poy
Fairbairn	Rivest
Ferretti Barth	Robichaud
Finnerty	(L'Acadie-Acadia)
Fraser	Robichaud
Fury	(Saint-Louis-de-Kent)
Gauthier	Roche
Gill	Rompkey
Graham	Ruck
Hays	Sibbeston
Hervieux-Payette	Spivak
Johnson	Stollery
Joyal	Taylor
Kenny	Watt
Kroft	Wiebe—52

#### NAYS

##### THE HONOURABLE SENATORS

Atkins	Keon
Berntson	Kinsella
Buchanan	Lynch-Staunton
Cogger	Robertson
Comeau	Rossiter
DeWare	Simard
Forrestall	Sparrow—15
Grimard	

#### ABSTENTIONS

##### THE HONOURABLE SENATORS

Andreychuk	Meighen
Beaudoin	Murray
Bolduc	Nolin
Carney	Roberge
Cohen	St. Germain
Doodo	Stratton—13
Kelleher	

• (1550)

**The Hon. the Speaker:** Are you rising on a point of order, Senator Carney?

**Hon. Pat Carney:** Honourable senators, we have the right, on abstention, to stand. I wanted to record that, since this is the first of 50 treaties in B.C. and since there is conflicting evidence as to its constitutionality, I can neither vote for it nor against it.

**Hon. Gerry St. Germain:** Honourable senators, also on a point of order, before coming to the Senate today, I spoke to my brothers and sisters in the Gitanyow and Gitxsan nations. They asked me to do what I did here today. Today is a sad day, in that our brothers and sisters have been victimized.

**Some Hon. Senators:** Order!

**The Hon. the Speaker:** Senator St. Germain, a senator is allowed to explain his or her vote but not to reflect on the vote.

**Senator St. Germain:** Very well, Your Honour. In that case, I will explain the vote.

Honourable senators, it is at the request of the Gitanyow and the Gitxsan nations that I abstained from voting on this important piece of legislation. It is important to the Nisga'a people and important to the people of British Columbia, and we must go forward; however, we cannot go forward while trampling on the rights of the minorities.



**Hon. A. Raynell Andreychuk:** Honourable senators, I also rise on the fact that I abstained. I reiterate what I said yesterday: I will not take sides, as a non-aboriginal, and choose between the Gitksan and Gitanyow on the one side and the Nisga'a on the other.

[Translation]

## ROYAL ASSENT

### NOTICE

**The Hon. the Speaker** *pro tempore* informed the Senate that the following communication had been received:

### RIDEAU HALL

April 13, 2000

Mr. Speaker,

I have the honour to inform you that the Right Honourable Adrienne Clarkson, Governor General of Canada, will proceed to the Senate Chamber today, the 13th day of April, 2000, at 6:00 p.m. for the purpose of giving Royal Assent to certain bills of law (C-6, C-9 and C-13).

Yours sincerely,

Judith A. Laroque  
*Secretary to the Governor General*

The Honourable  
The Speaker of the Senate  
Ottawa

[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise on a point of order: His Honour has just advised us of the message received from Government House. It is my understanding that it is the practice of this place that, when Her Excellency the Governor General comes to the Senate for Royal Assent, the first minister, the Prime Minister, will be present. I wonder if we can be advised if that custom will be respected and if the Prime Minister is on his way back from the Middle East.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, on this occasion, because of important work abroad, the Prime Minister will not be with us this afternoon.

**Senator Forrestall:** You didn't have a Sea King to send for him!

**The Hon. the Speaker:** Honourable senators, I presume that the point of order raised by Senator Kinsella has been responded

to and that there is no need for further statements by the Speaker or to take the matter under advisement. The matter is closed.

[Translation]

## BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Pierre Claude Nolin:** Honourable senators, before I begin, I should like to request leave to exceed the 15-minute period allocated to me by the *Rules of the Senate*.

**The Hon. the Speaker:** Is leave granted, honourable senators?

[English]

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, the request for leave was for how long?

**Senator Kinsella:** A short period of time.

**Senator Nolin:** Your Honour, must I state a condition? I am just asking for leave.

**The Hon. the Speaker:** Honourable Senator Nolin, you need not make any statement. Remember, however, that it is then open for someone to refuse leave. That is a risk that you take.

[Translation]

**Senator Nolin:** If I have to specify a period of time for my speech, it would be to seek leave to exceed the 15 minutes allotted by the rules.

[English]

**The Hon. the Speaker:** Honourable senators, there is a request by Honourable Senator Nolin for leave to extend his comments beyond the 15-minute period.

**Senator Hays:** Honourable senators, when leave is requested, it is in order to ask why. My question is simply this: Is that honourable senator asking for unlimited leave. Will he be more than an hour? I think that is a fair question.

**Senator Nolin:** For 15 minutes.

**Senator Hays:** I know that His Honour is considering a ruling. I have tried to be sensitive in the way in which I have conducted myself as Deputy Leader of the Government; however, I think our rules provide that I can ask that question. How long does the honourable senator want?

[Translation]

**Senator Nolin:** Honourable senators, I will accept the ruling of the Chair when it is issued. In the meantime, I shall exceed the 15 minutes provided in the rules. I hope I shall be less than an hour, but I cannot know how much time I shall need, nor how many questions I will be asked.

• (1600)

[English]

**Senator Hays:** Honourable senators, on the understanding that the honourable senator will be less than an hour, I would agree to Senator Nolin proceeding with leave.

• (1600)

**Hon. Eymard G. Corbin:** Honourable senators, on a point order: I agree with my deputy house leader. However, I believe that, at this stage, we need not anticipate. It could well be that the senator might terminate his speech in 15 minutes. Why rush? In 15 minutes, put the question.

**Senator Atkins:** That is exactly right.

[Translation]

**Senator Nolin:** Honourable senators, I have asked for leave and I am waiting for the answer.

**The Hon. the Speaker:** Does Senator Gauthier wish to speak?

**Hon. Jean-Robert Gauthier:** Honourable senators, I spent 21 years in the House of Commons and I remember that requests such as the one from Senator Nolin could be used for filibusters. I want to make sure that he does not intend to engage in filibustering on Bill C-20 and that he will speak for a reasonable time.

**Senator Nolin:** Honourable senators, I do have a text that will exceed the 15 minutes allowed for my speech, but I do not think it will go beyond one hour. It depends on the questions that will be put to me.

[English]

**Hon. Anne C. Cools:** Honourable senators, an hour can hardly be classified a filibuster.

**The Hon. the Speaker:** Is leave granted?

**Some Hon. Senators:** Agreed.

**The Hon. the Speaker:** Leave is granted. Please proceed, Honourable Senator Nolin.

[Translation]

**Senator Nolin:** Honourable senators, let me say from the outset that I would have preferred to talk about a project to reform Canadian federalism. Such a project would have been in line with the commitments for a major reform of Canadian federalism that the Prime Minister of Canada made on two occasions during the last week of the 1995 referendum campaign.

Unfortunately, this is not the case. Instead, I will comment on Bill C-20, to give effect to the so-called requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference. As you know, I was very closely involved in the three Quebec referendums, the first one in 1980 on sovereignty-association, the second one in 1992 on the Charlottetown accord, and the last one in 1995 on sovereignty, with or without a partnership with the rest of Canada. Following the very close results at the last referendum, on the evening of October 30, 1995, many Canadians realized that the sovereignty option could break up Canada.

A feeling of panic — and I am weighing my words carefully — took hold of people outside Quebec. Canadians urged the federal government to do everything within its power to keep Canada from again drifting to the edge of the abyss. During the 1995 referendum, I received a number of calls from Canadians worried about the future of our country. Canadians from all walks of life, including federal government ministers and provincial premiers, made these worried calls and my response at the time was almost always the same. All Quebec federalists are doing everything in their power to ensure that Canada remains united and prosperous.

If I had to speak to these same people again today, I would probably not be able to tell them that the storm had passed, because the federal government has done nothing significant since 1995 to convince Quebecers to opt for Canada; on the contrary.

Honourable senators, what our house is instead considering is a bill that defines the rules under which Quebec will be permitted to legally secede from the rest of Canada. Instead of undertaking a broad reform of Canadian federalism, the federal government has decided to plunge headfirst into the famous black hole to which Jean Charest referred in describing his concerns about taking a hard line approach against Quebecers. This is what is commonly known as Plan B.

I sincerely believe that the former leader of the Progressive Conservative Party was describing exactly what Bill C-20 represents. If I may make an analogy with astronomy, the study of black holes leads to the unknown; one knows when one will enter, but not when one will leave. It can therefore be said that the clarity bill is a political black hole that would threaten the political and social stability of Canada were it ever to be implemented.



On March 23, I asked the government leader on what constitutional authority the government was relying to introduce Bill C-20, although I did not contest the executive's authority to act in this area. Unfortunately, the government leader never gave a clear answer to the question.

Honourable senators, it is therefore important for this house to consider in greater depth the legality of the action being taken by the Minister of Intergovernmental Affairs in this affair. In this respect, the Supreme Court opinion regarding the secession of Quebec can enlighten us.

It is worth pointing out that the court had to justify its right to decide sensitive issues because the Constitution has nothing to say about a province seceding. Its ruling is based on the four underlying principles of the Constitution: democracy, constitutionalism, the rule of law, and protection of minorities.

In the aftermath of the judgment, a number of observers stressed the point that the court was taking a considerable risk in deciding to write a new chapter to the Constitution, one its authors preferred not to open in 1867 and 1982 for obvious political reasons. As well, it did so in such a way as to transfer the bulk of powers relating to the secession of Quebec to the federal government.

In a recent C.D. Howe Institute study relating to Bill C-20, Patrick Monahan challenged the solidity of the constitutional principles on which the highest court in the land based its decision on a matter of such seriousness. He wrote:

If the courts are free to add to the Constitution through the use of unwritten norms whenever they discover a matter not provided for in the text, they have, in effect, an open-ended license to rewrite the document at will. They can incorporate wholly new norms or obligations, even where the political authorities have determined that such matters should not be constitutionalized and should, instead, be left to the realm of ordinary politics.

At several points in the reference, one has the feeling that the court is hesitant in its analysis. In order to avoid coming out too clearly on highly political issues, it describes its mandate as:

...limited to the identification of the relevant aspects of the Constitution in their broadest sense.

The self-limitation that it practices, its delineation of questions that fall within its role and those it considers to be the political aspects of constitutional negotiations strike me as totally justified.

Paragraph 98 indicates that the court is merely attempting to give a legal interpretation of a political question. In paragraph 100, this position is reiterated by stating that it is the responsibility of the political actors to determine what constitutes a clear question and a clear majority, according to the circumstances of the time, before undertaking negotiations.

They would be the only ones to have the information and expertise to decide when these ambiguities would be resolved one way or another, depending on the conditions under which a future referendum might be held. On the other hand, the Supreme Court justices do not explicitly define what they mean by "political actors". The only reference to that notion is found in paragraph 88, where they refer to the democratically elected representatives, to the participants in Confederation.

In short, the court mentions that there is a reciprocal obligation to negotiate if the secessionist option is supported by a clear majority following a clear question. Moreover, the secession of Quebec must take place through a constitutional amendment under the Constitution Act, 1982.

Nowhere in its opinion does the highest court in the land impose on the federal government the adoption of a law to better position itself to face the Quebec government regarding this issue.

• (1610)

As the former chief justice of the Supreme Court of Canada, Antonio Lamer, so appropriately pointed out in an interview published in *Le Devoir*, on January 11:

There is a distinction to be made between a judgment and a reference. The Quebec secession reference, like any other reference, is merely an opinion. Neither Quebec nor the rest of Canada is forced to comply with our opinion. If it were a judgment, it would be binding.

Like me, a number of political commentators, academics, politicians and Canadians wonder about the constitutional legality of the federal government's measure. In that regard, the preamble of section 91 of the Constitution Act, 1867, can be useful. It reads, and I quote:

It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces...

On October 31, 1995, the day after the 1995 referendum, the current Prime Minister of Canada said on *The National* on the English network of the CBC that he would use the preamble to section 91 to determine the question of the next referendum in Quebec.

Honourable senators, according to Professor Peter Hogg, in the third edition of *Constitutional Law of Canada*, the preamble is in some sense the residual power often described as the general power of the Government of Canada. However, its use has been supported since 1867 by a number of legal decisions by the Privy Council and by the Supreme Court of Canada.

Since 1867, there have been three theories on the interpretation of this preamble. Again, according to Professor Hogg, the first is that of national dimensions, one characteristic of which is that the matter at issue must not be related to any jurisdiction already present in section 92 of the Constitution Act, 1867, which concerns the powers of the provinces. However, if the federal government can argue that certain actions by a province indicate it is unable to properly fulfil its responsibilities in a specific area and that this fact has an impact on the other provinces or the country as a whole, jurisdiction may revert to the central government. Professor Hogg describes this latter point as the test of provincial incompetency.

The second theory is that of national emergency. The federal government may cite it in cases of armed conflict, social insurrection, periods of grave economic instability in order to temporarily take over powers normally reserved for the provinces. This is limited power and is restricted to a period of time.

Finally, there is the theory of residual power. As Guy Tremblay and Henri Brun point out in the second edition of *Droit constitutionnel*, there are few legal interpretations of this aspect of the preamble.

Having presented these three theories on the interpretation of the preamble, I note that the constitutionality of Bill C-20 does not hinge on the theory of a national emergency, much less on the theory of national dimensions. Although the decision by Quebec may affect the other provinces of Canada, it is rather dangerous to say that Quebec would fail the test of provincial incompetency in holding its own referendum. To reach this conclusion, I considered the transparency of the Quebec electoral process, the strict provisions of the Quebec Referendum Act and the prerogative of the National Assembly over the definition of the question and of the majority required. Quebecers have the right to decide their own future. The opinion of the Supreme Court at paragraphs 65, 66, 68 and 86 recognized the legality of the referendum action.

Honourable senators, all that remains is to determine whether the federal government may act by virtue of its residual power. After much reading and many days of thinking, I find it difficult to say. I would have liked to be able to give an answer. In committee, I imagine that we will be able to answer in the affirmative or the negative. So far, this interpretation has been infrequently used to justify federal authority or the extension thereof. No court has ever ruled on Ottawa's role with respect to the secession of a province.

The only witness who quickly raised this rather important issue during consideration of Bill C-20 in committee in the other place was Guy Lachapelle, a professor of political science at Concordia University. I have absolutely nothing against professors of political science but they are not lawyers. They understand the nuances of constitutional law, but they are less knowledgeable about using and interpreting the nuances involved

in an understanding of constitutional law. Guy Lachapelle said, and I quote:

There indeed appears to be no legal basis for proposing this sort of bill. There is no agreement with respect to the election laws that would be subject to the approval of the federal parliament and, in the case before us, there is certainly no agreement as to the definition of terms.

...there is no specific agreement or legislation, except for section 91, that could still be used, that could validate an exercise such as this one. Once again, in my view, this bill undermines not only the rights of Quebec, but of all Canadian provinces and citizens as well.

I therefore believe, honourable senators, that it is important to again tackle the definition of the political players in order to analyse the constitutionality of Bill C-20. As I said earlier, the Supreme Court stated in its opinion that it was up to the political players and not the courts to define how Quebec's secession could be negotiated. Federally, political action does not always take the form of legislative measures. Yet the government has opted to pass a bill according to which it will be possible to ask the court formally to step in. This time, it will be able to bring down a ruling, not just give its opinion. So the courts will be called upon formally to intervene in the debate and say whether or not the federal Parliament has the right to act in this matter.

At the present time, Bill C-20 gives only the MPs sitting in the House of Commons this responsibility for determining whether the question and the majority are clear, before engaging in negotiations with Quebec. This raises serious questions, because they are not only actors in the sense of playing a role within Parliament and the executive, but they are also actors within their respective electoral districts. They need to represent not only the interests of their party, but also those of their constituents.

Under this bill, however, it is fairly likely that they will be pressured by cabinet and the party line. The dilemma is even more complex when Quebec MPs have to reach decisions on these matters, or when they come to the negotiating table. What will they do if Quebecers deem that a question on sovereignty-association is clear or that a simple majority is sufficient to initiate negotiations with the rest of Canada?

As well, the provinces, in accordance with the principles of Canadian federalism as set out by the Supreme Court, must also play an important role in this process. According to Bill C-20, they have only an accessory role, lacking the ability to impose their definition of a clear question or of the issues involved.

That brings me to two questions. Would some provinces that were more affected by the secession of Quebec take a different direction than that adopted by the House of Commons, in order to ensure that negotiations were possible? Can the federal executive monopolize the right to decide on the clarity of the question and the majority in favour that this question requires?



As far as Quebec is concerned, the third paragraph of the preamble to Bill C-20 recognizes that the National Assembly is at least entitled to consult its population by referendum on any issue and is entitled to formulate the wording of its referendum question. Clause 1, however, limits this statement considerably, by stating that the House of Commons shall consider the question and determine whether it is clear. The question will, moreover, be considered invalid if it contains the sovereignty-association option or an offer of political and economic partnership with the rest of Canada. Consequently, the question must address nothing but secession; otherwise the federal government does not have to engage in any negotiation whatsoever.

• (1620)

However, a reference of the Privy Council in 1919 on the constitutionality of the provincial referendums in Manitoba, "The Initiative and Referendum Act", recognized the right of provinces to hold referendums on matters of concern to their jurisdictions alone, on the condition they be consultative. That included the determination of the terms of consultation. However, the results were binding on neither the federal Parliament or on the provincial legislative assemblies.

At the moment, the Quebec Referendum Act provides for consultative referendums. According to Henri Brun and Guy Tremblay, Quebec has always assumed that the Canadian constitutional system permitted only this type of referendum. This rule was observed in the 1980 and 1995 referendums.

In addition, according to Professor Henri Brun, in a legal opinion published in *Le Devoir* in January, the title of Bill C-20, and I quote:

...suggests the idea under which the Supreme Court of Canada imposed the requirement of clarity on the federal Parliament. It is, on the contrary, up to the Quebec legislature, where appropriate, to give effect to the requirement for clarity expressed by the Supreme Court.

This is why, honourable senators, Bill C-20 in my opinion contravenes the federal principle, indeed the notion of residual power, because the House of Commons, the only political player duly recognized, could impose on the people of Quebec and on the National Assembly its definition of what constitutes a clear question and a clear majority. Bill C-20 dictates immediately the decision to be taken by the House of Commons, regardless of the type of question put by the National Assembly of Quebec.

In this regard, the provisions of clauses 1 and 2 of this bill are eloquent. As the former leader of the Quebec Liberal Party, Claude Ryan, put it before the committee of the other place, which was examining Bill C-20, and I quote:

If the National Assembly has the right to consult its population on a proposal to secede, it must be able to do so free from any constraint or interference from another parliament.

A little further along he added:

Under our system, each level of government is deemed sovereign within its own jurisdiction...The authority to determine the clarity of the question that would be given to the Parliament of Canada would mean it would obviously interfere with an ongoing referendum campaign.

In that sense, the population of Quebec must be considered a major "political actor" in the process.

I conclude this first part of my speech by saying that it is premature for me to voice an opinion on the constitutionality of this bill. It is clear that, since there is no urgency to legislate on this issue, the federal government could have done things differently, without subjecting the House of Commons, the Senate, the provinces and the National Assembly to the compelling provisions of Bill C-20.

During the 1980 and 1995 referendums, the federal government said that the question put to Quebecers was not clear, but it went no further. This is probably because, at the time, the government had deemed wiser not to go further, so as to keep all its options available, following a possible victory for the sovereigntists.

In fact, in the recently published study by the C.D. Howe Institute to which I referred earlier, Claude Ryan said:

The Constitution is silent on the question of secession by a province belonging to the federation. The Supreme Court could have concluded from this fact that, lawmakers having decided that this matter be left to political agents, it was not the role of judges to impose their judgment. Many factors favoured such an interpretation, notably the fact that constitutional silences sometimes mean that the document's framers, while not intending to deny the existence of certain realities, thought it wiser not to touch on them explicitly at all than to do so in an unsatisfactory way.

Is Bill C-20 the best response to the Supreme Court opinion? I do not think so. Therefore, it is critical that the Senate and the committee that reviews Bill C-20 examine the legality and legitimacy of the federal initiative, based on the fundamental laws that govern our country's political and social life. I must tell you that, in Canada, to create false hopes for Canadians, and particularly English Canadians, can be a very dangerous thing from a political point of view.

Honourable senators, I will now look at the claims made by the Minister of Intergovernmental Affairs regarding the effectiveness of his bill. Personally, I do not share his optimism. As is evident from the first part of my speech, the federal government's approach to the threat of Quebec's secession seems to be purely constitutional. It does not take into account the many social and political factors that could derail that approach immediately after a sovereigntist victory.

A careful reading of the Supreme Court opinion on the secession of Quebec is enough to convince us of the limitations of the legal framework with which Ottawa wishes to counter Quebecers' political action.

First, in paragraph 83, the highest court in the land recognizes that "Secession is a legal act as much as a political one". On the issue of economic and political interests, unstable political climate, minorities and borders, which would be the primary focus of negotiations following a sovereignist victory, the Court has this to say in paragraph 97:

In the circumstances, negotiations following such a referendum would undoubtedly be difficult. While the negotiators would have to contemplate the possibility of secession, there would be no absolute legal entitlement to it and no assumption that an agreement reconciling all relevant rights and obligations would actually be reached. It is foreseeable that even negotiations carried out in conformity with the underlying constitutional principles could reach an impasse.

Finally, after 107 pages of establishing that the unilateral secession of Quebec was illegal under Canadian and international constitutional law, the Court reaches a rather surprising conclusion in paragraph 155, and I quote:

Although there is no right, under the Constitution or at international law, to unilateral secession...this does not rule out the possibility of [a]...declaration leading to a de facto secession.

Professors Peter Hogg, Henri Brun and Guy Tremblay say much the same in their respective works, which I quoted from earlier. Such statements which, I remind you, come from the highest court in the land, are plain enough to cast doubt, as I said earlier, on the success of any action the federal government may take in the eyes of Canadians.

It is therefore understandable that the government only picked up some twenty paragraphs from the opinion for its press kits distributed to the media in order to justify its actions. They want to avoid addressing any real questions, even if that means a lack of transparency and playing with Canada's future.

Honourable senators, the government's lack of transparency on the true consequences of such an initiative is far from reassuring. It cannot help but contribute to a false sense of security. Many Canadians might be tempted to believe that this initiative will, to all intents and purposes, prevent Quebec from separating.

In this connection, some of the comments from English Canada, such as those made by Roger Gibbins, of the Canada

West Foundation, seem less conclusive about the true impact of Bill C-20. When he appeared before the committee in the other place, Mr. Gibbins said:

There's a strong possibility that Western Canadians assume the clarity bill goes much farther than it does. It would not surprise me, for example, if western Canadians believed the bill both defines the question that might be posed to Quebecers and sets the threshold at which a Quebec vote would trigger a response from the Government of Canada. Bill C-20 falls short, perhaps well short, of public expectations in these respects.

• (1630)

In the same vein, Gordon Gibson of the Fraser Institute in British Columbia, summarized his opinion of Bill C-20, which we are looking at here, as follows:

First, the bill is unnecessary. Second, the bill will be ineffective in the real world.

As honourable senators can see, it is not just those of us on this side who describe this bill as dangerous and inapplicable to the real world of politics.

Honourable senators, the bill creates some mythical thinking among a number of Canadians. I believe it is important to re-establish certain facts about some misunderstood aspects of this bill, and I am taking advantage of the time allotted to me today to do so. I will focus particularly on the determination of the wording of the question, the clarity of the majority of Quebecers voting in favour of the sovereignist option, and the obligation to negotiate that falls to the federal government.

Let us begin with the wording of the question. Outside of constitutional and legal considerations, unless the polls show an upswing for the sovereignty option — which is not currently the case — it is assumed, for political reasons, that the government of Lucien Bouchard will never ask the question favoured by Ottawa. This is understandable if it hopes to obtain a majority vote for its option. As I have already said, Bill C-20 will not be very effective in imposing the wording of the question on the Quebec legislature.

The Supreme Court never suggested that the question should concern a specific option when it talked of a clear question. Careful reading of the opinion of the Supreme Court shows that not only did the court not define a clear question, it expressly refused to do so. At paragraphs 84 and 87, we see that the notion of a clear question is used only as a condition of legitimacy of a particular process of constitutional amendment. As Andr  e Lajoie, a law professor at the University of Montreal, pointed out in a legal opinion on Bill C-20:

Therefore, the clarity requirements cannot include the obligation to limit the question to secession or to make it unequivocal. The court was right in avoiding this trap: there is, objectively, no unequivocally clear question.



So, the question may be on sovereignty-association or on partnership and not solely on the Minister of Intergovernmental Affairs' hard issue of secession. The opinion of the Supreme Court in this regard imposes no constraint on the National Assembly in determining the wording of the question. According to Professor Lajoie, it will be up to the political actors in Quebec and the people of Quebec alone to define an acceptable question.

However, the highest court in the land goes further by affirming that, if the political actors in the rest of Canada, including the federal Parliament, refuse to honour the collective position of the Quebecers on the clarity of the question, they face judgement by the international community on their will to negotiate in good faith as the Supreme Court indicated itself at paragraphs 152 and 154 of its opinion.

Honourable senators, contrary to the restrictive rules of the bill, a simple official statement by the Prime Minister of Canada on the clarity of the question during Quebec's referendum campaign would be enough in the eyes of Quebecers and Canadians. It would be more than enough for Ottawa to express its reservations about the question. Both Pierre Elliott Trudeau in 1980 and Jean Chrétien in 1995 had warned the Government of Quebec that they would not promise to go along with the referendum verdict. Both issued warnings before the referendum, because they were not satisfied that the question was clear. This option has the not insignificant advantage of leaving all options open in the event of a sovereignist victory.

The provisions of Bill C-20 do not provide this flexibility and could even put the federal Parliament and the rest of Canada in an untenable position.

Unfortunately, honourable senators, I believe strongly that the same comments can be applied with respect to the majority necessary for the government to enter into negotiations with Quebec. We can already say that if the members in the other place do not find the question clear, it would be only natural that it would not be held to be clear if a majority of Quebecers voted in favour of sovereignty.

Clause 2(2) of Bill C-20 defines the factors that the House of Commons must take into account in considering whether there has been a clear expression of a will by a clear majority of Quebecers that Quebec secede. Members must take into account, first, the size of the majority of valid votes cast in favour of the secessionist option; second, the percentage of eligible voters voting in the referendum; and, third, any other matters or circumstances they consider to be relevant. For a bill that claims to clarify the federal government's position on this issue, the government could have tried harder!

In the past few months, the Prime Minister of Canada and his Minister of Intergovernmental Affairs have indicated on

numerous occasions that the simple majority rule was not enough to fit the definition of a clear majority of Quebecers supporting secession. According to an article published in the *National Post*, in November 1999, the Prime Minister told some of his advisors that 60 per cent would be the lowest acceptable threshold to say that a clear majority of Quebecers support the sovereignist option. The Prime Minister's comments were probably based on a poll conducted between June 9 and August 2, 1999, for the Privy Council of Canada, in which 5,000 Quebecers participated. According to that poll, only 37 per cent of Quebecers felt that the simple majority rule should apply to the next referendum, while 60 per cent of the respondents were opposed to that. By contrast, 70 per cent of Quebecers agreed with using a 60 per cent threshold, while 27 per cent were opposed to the idea.

With such encouraging results, it would be important to determine what led the federal government not to go further in following the logic behind the clarity bill. In my opinion, to avoid creating false hopes, Ottawa should have included a percentage that would have stated once and for all what is a clear majority in the eyes of the Prime Minister and of the Minister of Intergovernmental Affairs.

Is this omission not likely to generate confusion among Quebecers, considering that all the political parties in Quebec and most social actors in that province agree with the simple majority rule?

Honourable senators, the Supreme Court expressed its views many times regarding the nature of the referendum result. However, it has always used the expression "clear majority". The only time it does not is in paragraph 87, precisely to warn voters that they would be wrong to give that expression a meaning other than the one given by the ordinary meaning of the words. The court stresses then that it refers to a clear majority in the qualifying sense, without going further. In a legal opinion on the interpretation of a clear majority, Henri Brun suggests that it means the greater number and nothing else. According to him:

The majority referred to by the Supreme Court to impose an obligation to negotiate is the 50 per cent majority of the votes that the sovereignist option would get in a referendum, not the approximate evaluation of the existence of a support by a majority for sovereignty.

In 1978, the Labour government in the United Kingdom introduced a bill to create a legislative assembly for Scotland. The British government decided this required a referendum by the Scots. It had recognized a simple majority as acceptable in determining the outcome of the vote. However, in order for the parliament to be created, the proportion of yes votes, votes in favour, had to be a minimum of 40 per cent of registered voters. In 1997, the British Parliament's white paper, which was again to lead to the creation of a Parliament for that region and the devolution of powers, stated that the rule of the simple majority would apply to determine the referendum outcome.

Moreover, as Gordon Gibson said to the committee:

My argument is that if a question with any tincture of sovereignty attached to it ever gets more than 50% plus one, you are into a new world, and I don't know how that world will unfold. The only thing I know is that a lot of control is lost at that point. The day that happens you are into negotiations, whether you want to be or not.

• (1640)

It can be stated, therefore, that the 50 per cent plus one figure has a certain magical power and a democratic legitimacy other figures lack. It is hard, for example, to find precedents for majority requirements of 60, 65 or 70 per cent and, when there are any, experience has often shown us that there is no piece of legislation that has ever kept a people from the path to independence.

In 1990, the Kremlin was heavily shaken by popular agitation in three of the Baltic Republics and adopted something similar to Bill C-20 in order to block their secession. It called for a 50 per cent plus one vote before Moscow would enter into negotiations with the new States. Gorbachev, then President of the Soviet Union, changed the law, raising the required figure to two-thirds of the votes cast.

Ten years later, it is important to note that this legislation impacted very little on the process toward sovereignty by these three republics. At any rate, it did not prevent them from seceding!

So, the government must recognize that a clear majority means 50 per cent plus one vote and nothing else, otherwise it will lead Canada into an impasse. As former prime minister Pierre Elliott Trudeau said so appropriately regarding the simple majority rule:

Democracy truly shows its faith in mankind by letting itself be governed by the 51 per cent rule. Because even though all men are equal and every one is the seat of a pre-eminent dignity, it inevitably follows that the happiness of 51 individuals is more important than that of 49. It is therefore normal that this *ceteris paribus* and given the inviolable rights of the minority, the decisions made by the 51 individuals take precedence.

Honourable senators, I now want to briefly discuss the issue of the participation rate required to determine if the majority of Quebecers who vote in favour of sovereignty is clear. The Minister of Intergovernmental Affairs should also tell us if the participation rates reported by Quebec's chief electoral officer — that is about 95 per cent of eligible voters at the 1995 referendum, 85.6 per cent at the 1980 referendum and 82.7 per cent at the 1992 referendum on the Charlottetown Agreement — are clear participation rates in the eyes of the federal government. It is very rare to have such a high rate of participation in an election or a referendum.

By comparison, according to *Policy Options*, which is published by the Institute for Research on Public Policy, the

participation rate at the federal election was 75 per cent in 1984, 75.3 per cent in 1988, 69.6 per cent in 1993 and 67 per cent in 1997. It would be interesting to know what the federal government would do if 55 per cent of Quebec voters supported sovereignty, with a participation rate of 90 per cent.

I want to draw to your attention the lack of a comprehensive list of objective criteria in addition to the majority threshold and the participation rate required to determine if a clear majority votes in favour of sovereignty. Clearly, if such a scenario occurred, federal members of parliament would be guided by emotions, indignation and anger in their analysis. Impartiality and reason will definitely not prevail during that process, even though Bill C-20 claims the opposite. As with the issue of a clear question, it is disappointing to see that the provinces and the Senate do not have a more prominent role to play in the process.

Honourable senators, from this analysis I conclude this part of my speech by affirming that the restrictive and obscure provisions of Bill C-20 on the clarity of the question and the majority will have an impact on the obligation to negotiate defined by the opinion of the Supreme Court.

Thus the effect of Bill C-20 is that the federal government, for purely political reasons, seems to want to abandon negotiation with Quebec as it said in the 1980 and 1995 referendums. Officially, Ottawa seems to recognize the prerogatives of the National Assembly. In practice, it wants to impose its political opinion through a bill, regardless of what Quebecers decide. And so, with Bill C-20, the federal government is considerably restricting the conditions under which it would have to negotiate the terms of Quebec's secession and is thus promoting a unilateral declaration of sovereignty. Accordingly, by tying its hands voluntarily, Ottawa is jeopardizing the political and social stability of the rest of the country if it refuses to negotiate in good faith the terms of secession with Quebec.

Honourable senators, I would remind you that governments have a mandate to ensure the security and prosperity of their citizens and not to manipulate them in the service of their partisan interests by Machiavellian measures like Bill C-20. The Minister of Intergovernmental Affairs is restricting himself to inconclusive theoretical models with little link to reality in defending Bill C-20. However, with his university experience, he should know that few declarations of secession have followed this model in the past hundred years. We need only think of the American revolution of 1776, of the period of decolonization between 1948 and 1970 and of the breakup of Yugoslavia and the Soviet Union.

Quebec sovereignists have always said that they were prepared to negotiate with the federal government the terms of Quebec's secession. At the end of November, Premier Bouchard said that:

If this is the position of the federal government after a yes vote, the doors will be wide open for a unilateral declaration of independence with the authority of the decision by the Supreme Court.



Honourable senators, with what I have just said, if I were a citizen of Ontario, Alberta or New Brunswick, I would be very worried about the fact that not only is this bill ineffective, but it makes no provision for an emergency plan for the rest of Canada should Quebec vote to leave.

According to Alan C. Cairns, a well-known professor of constitutional law at the University of Saskatchewan, the Supreme Court apparently addressed this question rather than focussing solely on Quebec. According to him, and I quote:

A new Canada will emerge from the ruins of the old as a distinct state, with almost no preparation for assuming this new status by either governments or the population.

The political and social disorganization that would follow a unilateral declaration of independence by Quebec could have very serious consequences for the safety of Quebecers and Canadians. In addition it would greatly weaken the federal government's negotiating power and its international reputation. The public must be aware of this.

Honourable senators, in conclusion, I believe that there was nothing urgent that justified the government in rushing to introduce a bill as incomplete, unrealistic and probably unconstitutional as this one. To hear the government tell it, there could be a referendum on sovereignty at any minute, but the signals from Quebec suggest otherwise.

Last week, during a visit to France, Lucien Bouchard said that the search for winning conditions as a prelude to a referendum was well and truly over. While Quebec's politicians discuss federalism and sovereignty in their respective corners, a new poll conducted for the Société Radio-Canada by Léger and Léger shows that the constitutional debate holds very little interest for Quebecers. About 55 per cent of them said sovereignty is an outdated concept, compared to 41.5 per cent who support the sovereigntist project. Seventy-one per cent of Quebecers have had enough of the constitutional wrangling. They want to move on to something else, as our colleague Senator Bacon said so eloquently this week. As Alain Dubuc, senior editor of *La Presse*, recently said, and I quote:

Quebecers, both federalists and sovereignists, have experienced too many failures, alternating between referendum defeats and aborted reforms of Canadian federalism. This national debate has led to Quebecers wasting their creative energies in pointless battles, subordinating the true needs and priorities of Quebecers to nothing more than the interests of the two opposing options.

For all the reasons I have given during my speech, then, I invite you to vote down Bill C-20. It does not respect the democratic tradition of Quebec and of Canada. It runs counter to the spirit of our founding fathers and contrary to the constitutional principles which have established the international reputation for tolerance and respect of freedom of expression our country enjoys. I strongly believe that we did not need a botched bill that only divides the population further for purely political considerations.

As we begin a new millennium, the Minister of Intergovernmental Affairs could have shown some optimism about the future of the Canadian federation. He has not.

• (1650)

Honourable senators, all that remains is to wait for history to decide whether this initiative will succeed in the future. I do not think it will.

I worked along with a number of you, for instance Senator Joyal, during the 1995 referendum. Imagine for a moment Senator Joyal and I getting together every day at 7 a.m. We tried to keep Canada together. Imagine us getting the news one morning that the House of Commons has decided, in good faith, that the referendum question was unclear. Ask us if that would help us in our efforts to keep Canada united. It would not. Do you think that Quebecers would accept being told by the House of Commons: "Your question is not clear. We will not proceed further. We will have nothing more to do with you!" That is not how things work in the real world. At some point, people need to wake up and tell Stéphane Dion this is not what the political reality of Quebec is all about.

On motion of Senator Hays, for Senator Hervieux-Payette, debate adjourned.

[English]

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Raymond J. Perrault** moved the second reading of Bill S-11, to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable.

He said: Honourable senators, the enactment of this bill would protect the right of health practitioners and other persons to refuse, without fear of reprisal or other discriminatory coercion, to participate in medical procedures that offend a tenet of a person's religion, or a belief of the person that human life is inviolable.

A former member of this chamber known to many of us, Honourable Senator Stanley Haidasz, worked for some time to obtain parliamentary approval of his effort to enhance and protect human rights. The cause has the support of people of various parties in Canada and is of concern to civil liberties organizations. Certainly civil liberties people in British Columbia have indicated their interest in this apparent shortcoming in human rights.

Before he left the Senate, the Honourable Senator Haidasz expressed the view that he hoped his work would continue here. Senator Haidasz first developed the essentials of this bill before he retired two years ago. Senators of differing persuasions approved the principle of the bill at that time. For various reasons, though, including the retirement of its sponsor, the bill dropped from sight.

Senator Haidasz mentioned, at the bill's second reading, that he had received over the years several letters and other correspondence, including more than 8,000 petitions from health care practitioners. This correspondence included messages from physicians expressing distress where an ethical decision concerning the risk to human life was hampered by the fear of reprisals. Where efforts were being made to save lives, to treat illness and to ameliorate but not necessarily eliminate suffering, there were fears of reprisals for striving to avoid exposing life to lethal risks.

Many of the same doctors and nurses acknowledge that proving the intent to suppress their convictions about human life would be impossible. Nevertheless, all of the petitioners expressed a view that they would be relieved to have federal legislation to meet their concerns.

A federal remedy has been sought over these many years because the issue of freedom of conscience and religious expression lies four-square within the ambit of our criminal law power in Parliament.

The late Justice Walter Tarnopolsky of venerable memory, a renowned Ontario Court of Appeal justice and Osgoode professor of law, produced 20 years ago a seminal, unpublished paper entitled "Freedom of Religion in Canada: The Legal and Constitutional Basis." That paper and the Canadian Bill of Rights have been cited regularly by legal authorities and others studying the broader issues of religious and conscience rights, even after enactment of the Canadian Charter of Rights and Freedoms, which came some years after the proposed Bill of Rights.

Ablly demonstrated by Justice Tarnopolsky in this special study, the simple bottom line is the power to protect these inherent and now Charter rights lies nowhere else. It does not lie in the provinces, except as a power to enforce.

One can only wonder why it has taken so long to bring this important issue of human rights to public attention. Legislated protection for health-care workers already exists in many jurisdictions, including 45 out of 50 states in the United States. Incredibly, in Canada we do not yet have any legislative protections in either provincial or federal law. To many Canadians, this is a tragic situation because the need is great. There have been clear violations of the human and labour rights of nurses working in Canada. Many have been denied employment or denied a promotion or have been dismissed for refusing to participate, for example, in abortion procedures. Other nurses, fearing a loss of job and possibly career, have violated their consciences in order to keep their jobs.

This is causing a great deal of psychological pain since these nurses entered their professions with a desire to heal but now find that they are coerced into inflicting what their hearts tell them is the ultimate form of harm. Many nurses have agonized over this dilemma. Indeed, two years ago, my wife and I were canvassing in one of the lower mainland constituencies of British Columbia. We were met at the door by a woman who was clearly distraught. She said:

I have been a nurse for 16 years at our local hospital and I can no longer in conscience participate in certain procedures which I believe are wrong and I have quit my job. I am unemployed.

The situation facing many nurses is described well by the organization called Nurses for Life. Nurses for Life believes that at least five considerations need to be kept in mind when considering the plight in which a number of nurses find themselves.

First, it is sometimes claimed that abortion is strictly a private matter between a pregnant woman and her physician, but Nurses for Life state that they know that this is never the case. Doctors do not function without nurses who are deeply involved participants at every stage of the abortion procedure. The problem is that while doctors are free to perform or not to perform abortions, and while pregnant women are free to undergo or not to undergo abortions, nurses have not been given the same freedom to choose whether or not they want to participate in this procedure. They claim that they have been taken for granted.

Second, unlike doctors, nurses are employees of hospitals. Their employment and income are, therefore, dependent on their remaining in the good graces of hospital administrators in a way that the doctors' income and employment is not.

• (1700)

Third, even in the rare instances where nurses' employers accommodate their conscience rights, "respect-for-life" nurses can be singled out as nonconformists who are not "team players." This greatly inhibits their chances of promotion.

Fourth, like doctors, nurses maintain that they often specialize in areas such as obstetrics and gynecology in which they acquire a special knowledge, experience, skills and interest. Even if the hospital offers to "accommodate" conscientious objectors, it often does so by transferring these nurses out of the department in which they have their specialty, despite the fact that abortion procedures constitute only a small part of the department's practice. Nurses are coerced into either assisting in abortions or abandoning their specialization, which they have worked hard at and which has become a part of their professional identity. By contrast, no one has ever suggested that Canadian doctors who specialize in obstetrics and gynecology would leave their specialty because they are unwilling to perform abortions.

The fifth point on the nurses' lists is this: It is becoming increasingly difficult for certain nurses to choose their areas of practice in which they can avoid the problem of assisting in abortions, since the procedure is often performed in wards other than obstetrics and gynecology. This is not a pro-life or pro-choice debate at all. This is a matter of human rights. I am not arguing the other case.

There is frustration by hundreds of nurses across the country who have been unjustly coerced in one way or another. Most of their stories have never gained public attention; some have, of course.



One notable example involves the mistreatment of nurses alleged at the Markham-Stouffville Hospital in the Toronto area in Ontario. Eight nurses were dismissed from the hospital in 1994 because they would not assist in abortions. They took their complaint to the Ontario Human Rights Commission. They waited five long years for a hearing, during which one of the nurses died. At the last moment, right before the hearing was scheduled for this year, the hospital agreed to settle. In addition to providing financial compensation, the hospital agreed to draft a strong policy statement protecting the conscience and labour rights of nurses still at the hospital.

Honourable senators, I maintain that this bill offers a suitable remedy to the many who are afflicted with a dilemma that ought not to impede them in their response to healing and caregiving as something that they see even, in the case of some, as a spiritual vocation.

The situation that many nurses face in the workplace is clearly unacceptable. It violates their human rights. There is evidence that at every turn nurses are entitled to legal protection.

First, section 2(a) of the Charter of Rights and Freedoms guarantees freedom of conscience and religion.

Second, these freedoms are also listed in the Canadian Human Rights Act and in provincial human rights legislation.

Third, case law in both Charter and human rights cases overwhelmingly supports the protection of freedom of conscience and religion in Canada. The nature of the various cases and rulings indicates that if every unlawfully dismissed nurse were to lodge a formal complaint against her former employer, the employers would probably lose.

Fourth, the Code of Ethics of the Canadian Medical Association clearly acknowledges the principle that health care workers possess conscience rights. It states that physicians are to "inform the patient when their personal morality would influence the recommendation of practice of any medical procedure that patient needs or wants." The wording clearly implies that while doctors must inform patients of their personal convictions, they in no way have to abandon those convictions. In the matter of abortions, for example, doctors are required neither to perform abortions nor even to refer clients to those who perform the procedure.

Fifth, some medical facilities have themselves acknowledged that nurses possess conscience rights. I have already mentioned the Markham-Stouffville Hospital, which is the most recent example of a hospital granting and implementing a policy statement to protect nurses.

The first key statement in its policy reads: All nurses with a religious objection to perform or participate in first trimester termination of pregnancy will be exempt. Subsequent clauses repeat this affirmation for second and third trimester abortions. The only exception made to this policy is when a pregnancy actually puts the mother's life in danger.

Yet, honourable senators, even with this kind of clarity from the Charter, Human Rights Acts, the Canadian Medical Association, and the policy statement of certain hospitals, nurses' rights are still being violated. Why is this? Why have these laws and policy statements not been sufficient?

In a recent speech delivered in the other place on the subject of Bill C-207, one of the MPs, Mr. Maurice Vellacott, made an interesting and excellent contribution to the dialogue. He said:

Let's start with the Charter. The Charter cannot protect nurses from coercion in the workplace because it was simply not designed for this purpose. The Charter can only be used to attack laws that are inconsistent with Charter rights. Since the current violation of nurses' conscience rights is not being driven by any special federal or provincial laws, there is nothing to attack by means of the Charter. The Charter is, therefore, unable to help nurses in their present plight.

If the Charter is of little help, what about Human Rights Acts and Commissions? Unfortunately they are also insufficient. Human Rights Commissions attempt to remedy injustice after the fact — usually years after the fact. They are ineffective at preventing people from losing their jobs. In addition, they only address abuses that are brought forward by people with above average initiative who are familiar with their rights and are persistent. As a result, many injustices go completely unnoticed by the commission. On the whole, Human Rights Commissions, because they are slow and reactive, are unable to provide nurses with immediate proactive protection which they need to stay employed.

Lastly, the nurses asked us to consider the effectiveness of hospital policy statements. The problem here is that so few hospitals have such statements. I have mentioned the success story of the Markham-Stouffville Hospital and we need to keep in mind that the hospital adopted this policy only when it was on the brink of a hearing before the Ontario Human Rights Commission. It can be said that the right thing was done but it was done very reluctantly. Without pressure perhaps it would never have acted. And that is why separate and explicit conscientious legislation for health care workers is needed.

The measure proposed here may be limited in scope, but it would at least provide relief to nurses from the immediate threat they are facing today.

Canada, under which freedom of conscience and religion would be protected, is criminal law power. The established doctrine that religion and conscience finds its first head of protection under federal law remains settled.

Freedom of speech has long been recognized in common law and was often related to the freedom of religious expression. That is but one historic reason that federal jurisdiction is the first ambit for defence of inherent rights that are so fundamental in a free and just, democratic society.

We have already a Criminal Code that declares it an offence to obstruct a religious meeting. We also have a Human Rights Act that forbids discrimination on the basis of religion or creed. Under the Canadian Charter of Rights and Freedoms, both provisions are subject to a consideration of "reasonable limits" where necessary to protect "public safety, order, health, or morals, or the fundamental rights and freedoms of others." These are words from an international document.

"Reasonable limits" are what constitutional experts mean when they say the right to religious freedom is not an absolute, but the expression of one's conscientious belief that a patient's life is sacred is hardly something that threatens public order, health or morals. At any rate, when the freedom to live with this conviction is threatened by coercion, a statute should be there to offer protection in accordance with fundamental justice.

A number of surveys of Canadian jurisprudence respecting the freedom of conscience and religion refers to Article 18 of the International Covenant on Civil and Political Rights, which Canada ratified in 1976. The first three paragraphs of Article 18 are worthy of citation:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his or her religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his or her freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

Honourable senators, it is for the reasons of fundamental justice described in this last paragraph of Article 18 that an emergency room paramedic can be compelled to assist in a blood transfusion, even if he has become a Jehovah's Witness. Such a limit of his religious freedom in the circumstances is deemed a reasonable limit. However, a conscious and competent Jehovah's Witness as a patient cannot be compelled to submit to a blood transfusion. It is the refusal to take life-risking actions, not life-saving ones, that is backed by the power of the proposed bill.

• (1710)

Freedom of conscience and freedom of expression lie at the very root of Canadian Confederation. The cultural freedom of

disparate religious groups has been a touchstone of Canada, in writing, in civil code and in what can be called innate or inherent rights, from the beginning of Confederation and before — indeed, since Cabot's landing and the founding of different confessional communities in Newfoundland.

In the context of the reality that medicine, both science and practice, has loosed its moorings from the stays of respect for human life, there is need to strengthen the fundamental regard we have of conscience. We must put in place measures to meet the serious abuses of personal freedoms and ultimately of patients' lives. Down the road, we need legislation that is more comprehensive than this bill or the bill that was introduced in the other place.

Honourable senators, I invite your support for Bill S-11. It will not only be of help to thousands of those in the nursing profession, but it will serve to advance the cause of human rights, which is of such concern to all members of this chamber. I hope that honourable senators will support reference of this bill to the appropriate parliamentary committee, where the views of both proponents and opponents can be heard and where we can determine if there is a violation of human rights in the situation that exists at the present time.

On motion of Senator Cools, debate adjourned.

## CRIMINAL CODE CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—SECOND READING—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Taylor*).

**Hon. Anne C. Cools:** Honourable senators, last Tuesday, during his remarks —

**The Hon. the Speaker *pro tempore*:** Honourable senators, I wish to inform the Senate that if Senator Cools speaks —

**Senator Cools:** No, honourable senators. It is a point of order I am asking the Senate for leave to defer.

**The Hon. the Speaker *pro tempore*:** What are you asking from the Senate, Honourable Senator Cools?

**Senator Cools:** I was about to say, honourable senators, that I wanted to rise on a point of order in respect of remarks that Senator John Bryden had made, but the honourable senator is not here today. Therefore, I should like to indicate to the Senate that it is my intention to raise a point of order when he is present.



**The Hon. the Speaker pro tempore:** Therefore, this order will remain standing in the name of Honourable Senator Taylor.

Order stands.

## A BILL TO CHANGE THE NAMES OF CERTAIN ELECTORAL DISTRICTS

### SECOND READING—ORDER STANDS

On the Order:

Second reading of Bill C-473, to change the names of certain electoral districts.—(*Honourable Senator Carstairs*).

**Hon. Sharon Carstairs:** Honourable senators, this item is standing in my name because it was introduced when I was acting deputy leader for the day. The sponsor of the bill is actually Senator Rompkey. Therefore, I should like the item to stand in his name.

**The Hon. the Speaker pro tempore:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Order stands.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### EIGHTH REPORT OF COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Rompkey, P.C., seconded by the Honourable Senator Robichaud, P.C. (*Saint-Louis-de-Kent*), for the adoption of the eighth report of the Standing Committee on Internal Economy, Budgets and Administration (Accessibility for Persons with Disabilities) presented in the Senate on April 10, 2000.—(*Honourable Senator Carstairs*).

**Hon. Sharon Carstairs:** Honourable senators, it is with pleasure that I rise today to speak to the eighth report of the Standing Committee on Internal Committee, Budgets and Administration. This specific report deals with the accessibility issues within the Senate of Canada.

Honourable senators, the credit for this initiative goes to Senator Brenda Robertson. I was delighted to work with her and with members of the Senate staff, but no one should forget that it was done under the leadership of Senator Robertson.

I know that many of you have watched with interest and some curiosity the new service provided to our colleague Senator Gauthier. As you are aware, he has a hearing disability. Despite our attempts to give him enhanced and advanced audio, we failed. The new service provides that a reporter produces a

running written presentation to Senator Gauthier, which he can read, thereby making all debates fully accessible to him in this chamber, in caucus and in committee, provided that there is staff available.

This, honourable senators, is the nub of the entire issue surrounding accessibility. We can develop policies and we can provide new initiatives, but if we are not fully committed — and this almost always means a commitment of dollars — policies will remain pious phrases. It is my hope that we will go well beyond pious phrases with respect to accessibility in this institution.

Honourable senators, we have made a very good first start this year, but it is just the first step in the process. I would remind honourable senators that we have many miles to go before any of us can sleep.

**Some Hon. Senators:** Hear, hear!

**The Hon. the Speaker pro tempore:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.

## EUROPEAN MONETARY UNION

### REPORT OF FOREIGN AFFAIRS COMMITTEE ON STUDY

On the Order:

Resuming debate on the consideration of the fourth report of the Standing Senate Committee on Foreign Affairs entitled: "Europe Revisited: Consequences of Increased European Integration For Canada", tabled in the Senate on November 17, 1999.—(*Honourable Senator Grafstein*).

**Hon. Roch Bolduc:** Honourable senators, the Foreign Affairs Committee has in recent years produced two reports on the European Union, because this association of states is important both in itself and for Canada.

The European Union represents one quarter of the world's production, just like the United States, about \$8 trillion each. For purposes of comparison, it should be noted that Canada accounts for about 2.5 per cent of world production.

All honourable senators here know that 87 per cent of our foreign trade is with the United States. However, it is worth recalling that we do \$65 billion in business with the European Union every year in goods and services, and that foreign investment on either side of the Atlantic — that is, in Canada and in Western Europe — is on the order of \$45 billion, as Senator Stollery, chair of the committee, reminded us recently. Just yesterday, for example, International Trade Minister Pierre Pettigrew announced that Bombardier is selling Spain 40 aircraft, including 29 Dash 8s and 11 medium-range jets, a deal worth \$1.2 billion.

The European Union is thus an important political region for our economic activity, to say nothing of the special cultural links that we have had for centuries with England and France and, more recently, with Germany and Italy, among others.

However, the growth of our trade with the European Union has been slowing down relative to the rest of our foreign trade. We are, in fact, in something of a corner, caught on the one side by the growing importance of our dealings with the Americans and on the other by the difficulties we are encountering in increasing our trade with Western Europe. How can we expand our manoeuvring room? That was the type of concern we dealt with in our two studies and reports on the European Union.

Before answering that and other related questions, I should like to discuss briefly how the situation in Europe has changed from a decade ago.

First, the French leadership in Europe that marked the post-war period and reconstruction began some years ago to be replaced by a German ascendancy — low key but real. Not everyone would agree with me on this, but it seems to me to be inevitable anyway.

Second, the Kosovo episode decisively changed the image that Western Europe had of itself. The European defence initiative, although it may be an objective that will take a decade to achieve, now seems to me both feasible and healthy, as long as it is exercised within the framework of NATO, which remains and must remain the western security umbrella.

The Euro, although its value has dropped in relation to the American dollar over the past year, which was to be expected, has been launched and is primarily benefitting European exporters.

Lastly, the political leadership of the union is shifting from the commission in Brussels to the normal and more legitimate hands of the member governments. Europe is thus heading more in the direction of a confederation than of a federation, which can only improve the democratic decision-making process. It remains to be seen whether consensus or some kind of majority rule will be confirmed in order to speed up the pace of decision making in a rapidly evolving international context.

• (1720)

The political culture of continental Europe, represented by the joint accumulation of 80,000 pages of regulations, continues to make the British uncomfortable. They have rejected the monetary union which, on the other hand, will shortly include new Scandinavian partners. All this means that the European political landscape is changing noticeably every year.

The British — and an analogy could be drawn here with the Quebecers in our federation — have doubts about the more interventionist approach of the continental Europeans.

[Translation]

In fact, it is no secret to anyone that the English have felt uncomfortable, since Mrs. Thatcher and even with a Mr. Blair more centrist than many Conservatives, with certain European phenomena foreign to their viewpoints, for example, a fairly inflexible labour market, a central bank that answers to no one, Rhenish capitalism, which, although still evolving, remains very different from the more decentralized Anglo-American capitalism, a lag in high-tech spending and investments, a type of governance less democratic than the traditional one at Westminster and perhaps rules of ethics in the daily workings of the Union, whose application has surprised the islanders in recent years.

Even yesterday, we saw an example of the quasi judicial use of power by a court on the competition that was impeding certain transactions between American and European companies. We have seen this in Canada. Canadian companies have been in the same situation.

These are the broad lines of the look of the European landscape that struck me during these studies by our committee. What does all this mean for Canada? First, I think we must keep a watchful eye on this regional economic and political integration process, for reasons given earlier. The situation is changing, and we must be aware of it.

In trade terms, our strategy must, in my opinion, be one of flexibility: the Europeans are subsidizing their farmers to the tune of \$45 billion U.S. annually. That is a huge amount, and hurts us. What is more, in the process of expanding the Union, the countries awaiting membership are farming countries such as Poland, whose conditions of entry currently under negotiation could perhaps harm us.

This is why we must target our action on the trade front: that means elimination of technical barriers such as the certification of technical qualifications, rules of competition and so on, agreements focussing specifically on new information technologies, for example, or e-commerce, progress in our trade agreements with other countries that are not members of the Union, such as Norway and Switzerland, promotion of bilateral relations with Ireland — which are already well underway — but with England, Holland and Germany too, not to mention France and Italy.

We have common cultural interests with France, among other countries, and we must develop them. In the case of England, it is more complex because of the natural intertwining with the United States.

We must discuss with Western Europeans, with our cultural cousins, general common concerns for world peace, for example energy issues, global warming, the international financial architecture that is being redefined and the transatlantic link that is so critical from a geopolitical point of view. I will get back to this when we discuss the most recent report of the Standing Senate Committee on Foreign Affairs on NATO.



This year, we must also try to deal with the problems that surfaced at the World Trade Organization, during the talks on agricultural protectionism. We must also use the OECD to tell Europeans about the benefits of regulatory multilateralism in the area of trade, and the joint benefits of having clear rules to protect foreign investments. This is very important for us, because, faced with European trade barriers, our industries have decided to bypass these barriers by investing in Europe and settling there.

Honourable senators, these are my thoughts as we table our report.

**The Hon. the Speaker *pro tempore*:** Honourable senators, if no other senator wishes to speak, this item on the Orders of the Day is considered debated.

[English]

## NATIONAL DEFENCE

### NEED TO JOIN WITH UNITED STATES IN MISSILE DEFENCE PROGRAM—INQUIRY—DEBATE ADJOURNED

**Hon. J. Michael Forrestall** rose pursuant to notice of April 5, 2000:

That he will call the attention of the Senate to the need for Canada to join the United States in National Missile Defence.

He said: Honourable senators, I wish to draw your attention today to the issue of the United States National Missile Defense Program, or NMD. As senators are aware, Senator Roche, a former ambassador for disarmament, raised this issue earlier this year. It is to the Senate's credit that we have men and women like him here in the Senate initiating and leading the debate on arms control issues with the knowledge and passion that he brings to this important topic. However, after some considerable thought and many years of being very closely involved, I must disagree with his opposition to National Missile Defence.

When Senator Roche addressed us, he said:

The government should couple its resistance to missile defence with a vigorous implementation of the 15 recommendations in the report of the Standing Committee on Foreign Affairs and International Trade entitled "Canada and the Nuclear Challenge: Reducing the Political Value of Nuclear Weapons for the Twenty-First Century."

As a point of fact, it is actually a report of the other place and not a Senate report.

Having said that, I fully agree that we should support those recommendations, and I ask honourable senators, what could reduce more the political value of nuclear weapons, in particular a large arsenal of offensive retaliatory nuclear weapons, than an effective non-nuclear national missile defensive system? That is the thrust of my argument, which concludes that it is very much

in Canada's national interest to support the proposed defensive system.

What is National Missile Defence? Why is it important? Does it violate the ABM Treaty? If so, does this destabilize deterrence? What are Canada's interests in National Missile Defence? What should Canada do to try to address them?

First, National Missile Defence is not "star wars" and not SDI, a grandiose space-based missile defence system, infamous from the Ronald Reagan years. It died a timely death due to cost and lack of technical means to make the program work.

National Missile Defence is based on at least two defence systems — Theatre High-Altitude Area Defence, or THAAD, and the Navy Theatre Wide program, or NTW. The plan is to have one system, or both, in place by the year 2007, if the President of the United States makes the decision to move forward this summer.

Theatre High Altitude Area Defence would see 20 exo-atmospheric vehicles or unarmed interceptor missiles deployed in 2007 and approximately 80 more over the next few years. These defensive missiles disable incoming, threatening ballistic missiles through the effects of impact. They are not armed. The Theatre High Altitude Area Defence system would eventually see upward of 100 missiles deployed in Alaska. If it moves to a second subsequent stage, then another 100 would be deployed in North Dakota. The sole purpose of THAAD would be to attack and destroy ballistic missiles before they could reach the United States. The Navy Theatre Wide program was developed for two reasons: One, to protect forward deployed United States forces and their allies from such things as Iraqi or North Korean Scud missile attacks; and two, to provide early tracking and interception of missiles before they are engaged by THAAD. Navy Theatre Wide is based upon the air defence systems of the Aegis destroyers, cruisers of the United States navy, and the Standard Missile-3 that is being developed in cooperation with Japan. In June and August 1999, THAAD had two successful intercepts during testing and a subsequent failure. Navy Theatre Wide has had a number of successes over the past year. However, it is important to note that both are theatre level systems, not national strategic systems. It would take both together, and others, obviously, to create a national missile defence system.

• (1730)

The reason that billions of dollars are being spent on these programs may not be obvious to Canadians, but it is to other countries in Asia and in Europe — people who fear missile attack by the so-called rogue states. These rogue states of Iran, Iraq, and North Korea care so little for their own population that one can reasonably assume that they would care even less for their neighbours. North Korea, Iraq and Iran have developed medium- and longer-range ballistic missiles that threaten their neighbours and that someday soon may threaten the United States and Canada. North Korea's Taepo Dong-2 immediately comes to mind as a potential threat some time in the very near strategic future — probably by the year 2005.

The proliferation of missiles, honourable senators, both ballistic and cruise, is occurring at an alarming rate. These very countries I have mentioned are all believed to have developed or are near to developing chemical, biological and nuclear weapons. There is a threat. Make no mistake about it. Thirty states now have ballistic missiles, and 70 have cruise missiles. Critics charge that National Missile Defence is not geared to defend the United States from a terrorist group with a crude nuclear weapon. That is quite true, but the real threat of a major catastrophe remains rogue missile launch of a nuclear weapon. Each threat calls for different counter-measures. To deal with suitcase bombs, for example, you need reliable intelligence. To deal with North Korean missiles, you need a limited non-nuclear missile-based defence system. The critics should stop mixing apples and oranges.

Is National Missile Defence a violation of the Anti-Ballistic Missile Treaty of 1972? In my judgment, there is no question that Navy Theatre Wide as currently armed violates the 1972 ABM Treaty, and 1974, and particularly the 1997 amendments, because the Navy Theatre Wide employs an interceptor missile that exceeds the treaty speed cap of three kilometres per second. The 1997 amendment allows Theatre Missile Defence but caps the interceptor speed at three kilometres per second. You will notice immediately that this is a technical violation, not a legal violation, of the treaty. That is so because, as I have suggested, this is a theatre level matter, not a strategic level, so it is not a legal violation of the treaty. As well, it is important to point out that the ABM Treaty allowed for limited ABM defences in a limited region, for example, around the nation's capital or a missile field — not both. Russia's had its ABM system around Moscow for years. The American's used to have a defence system in North Dakota and abandoned it. Now North Dakota is the site of a proposed second-stage system, which could be put in place now with no violation of the ABM Treaty whatsoever. The ABM Treaty allows theatre level systems but not strategic systems.

Honourable senators, I do not need to remind you that that which is not written in a treaty is outside of a treaty. This is no such thing at present in international law as the spirit of the treaty — or as we like to say, "the spirit of the legislation." This is another world. I think the drafters could have and perhaps should have considered the fact that theatre systems could be plugged into a central strategic system, resulting in a legal violation of the ABM treaty. However, that did not happen. What the ABM Treaty may not allow is the national coverage that Navy Theatre Wide would provide in addition to THAAD. Indeed, I believe that THAAD is not a treaty concern, as it does not give national coverage of all 50 states and is only situated on the missile tracks for missiles fired from Asia — in other words, North Korea, China and Russia. Thus, ABM Treaty violations and discussions will hinge on the Navy Theatre Wide position.

Honourable senators, the Russians and Chinese are clearly concerned with the United States' plans to create a National

Missile Defence system and claim that it destabilizes deterrence. Does NMD stabilize deterrence? Deterrence is based on the premise that, in the event of an attack by an aggressor, they in turn would face counterattack so costly as to make the initiation of any missile exchange completely irrational and strategically useless. Deterrence is based upon a premise of rationality. The current NMD system now proposed by the United States is not geared to face a salvo of 877 land-based Russian inter-continental ballistic missiles. It never was intended for that purpose. If Russia's sizeable and extremely capable arsenal was launched at the United States, it would easily overwhelm the 20 to 100 American defending missiles. Additionally, Russia is placing increasing reliance on its Submarine Launched Ballistic Missile force. These missiles would easily defeat an ABM system because of the short warning time between launch and impact, leaving a defender little time to react until it is too late.

It is also important to point out that these missiles are existing systems that can defeat National Missile Defence. Therefore, there is little danger of the costly resort to an arms race that Russia, because of its economic position, is not prepared to win, let alone fight. Thus, National Missile Defence is not even in this deterrence equation. NMD does not threaten American-Russian deterrence and probably will become a mute point or, at best, a bargaining chip down the road. In fact, it may be the leverage needed to get the Russian Duma to ratify START II and possibly push the Americans to looking at START III. It is in President Putin's interest to do so, I would suggest, before a Republican president takes office in that country.

• (1740)

At present, honourable senators, China only possesses a few inter-continental ballistic missiles that could be intercepted by the American system in a nuclear exchange. This situation changes every day. Soon, China will deploy a multiple-warhead-capable, road-mobile, inter-continental ballistic missile in the form of the DF-31 and the DF-41 in sufficient numbers to easily overwhelm THAAD or Navy Wide. Additionally, new submarines are in building that will carry the JL-2 Submarine Launched Ballistic Missile, again a system that could easily defeat NMD. This will happen very quickly over the next few years and likely prior to America's scheduled deployment of National Missile Defence in 2007. As no National Missile Defence System is deployed to date, and as it is likely that China's nuclear arsenal will go through modernization prior to THAAD or Navy Theatre Wide deployment, it is unlikely that Chinese-American deterrence will be threatened. Again, these systems, the DF-31, the DF-41 and the JL-2, will easily be deployed in numbers sufficient to overwhelm National Missile Defence, and there is no reason to move to an arms race. Hence, suggestions that National Missile Defence will foster an arms races is plain nonsense. The weapons are in either the deployment phase or in the building phase now.



Critics of National Missile Defence charge that it will lead to a proliferation of missiles and nuclear weapons. I contend that it is important to note that Russia and China have been among the worst proliferators of missile technology in the world. Their Missile Technology Control Regime and the Non-Proliferation Treaty are increasingly being violated without regard as to whether the United States goes ahead with the National Missile Defence system or not. Russia is helping Iran with its missile program, and China is believed to be behind Pakistan's program. Indeed, if China, Russia and North Korea stopped the proliferation of missile systems, we would likely not be faced with this very serious question.

**The Hon. the Speaker:** Honourable Senator Forrestall, I regret to have to interrupt you, but your 15-minute speaking period has expired.

**Senator Forrestall:** I should like a few more minutes.

**Senator Hays:** I am curious. How long does the Honourable Senator Forrestall think he will be?

**Senator Forrestall:** Not more than seven or eight minutes, and certainly not an hour.

**The Hon. the Speaker:** Is leave granted, honourable senators, to allow Senator Forrestall to continue?

**Hon. Senators:** Agreed.

**Senator Forrestall:** Indeed, if Russia, China and North Korea stop the proliferation of systems, we would likely not be faced with this situation today. China's buildup of theatre-level nuclear and conventional missile forces may, in the end, force Japan and Taiwan to arm with nuclear weapons and missiles. Japan could do so very rapidly. Chinese rhetoric threatening its neighbours with missile attack, as it did recently with the United States, is far from helpful. Iran, Iraq, North Korea, Israel, India and Pakistan are all likely in violation of the 1970 Non-Proliferation Treaty because they believe that possessing nuclear weapons enhances their security. In my mind, the proliferators are bringing us to the edge and it is they who are destabilizing deterrence at the regional and theatre level. The Non-Proliferation Treaty is, in reality, dead. Perhaps if China, Russia and North Korea behaved better, the United States would be more inclined to listen to their concerns about National Missile Defence.

In summary, honourable senators, China-U.S. and Russia-U.S. deterrence is not destabilized in the slightest by National Missile Defence. Proliferation of missile technology and nuclear weapons continues in the absence of the system.

The question is: What is in it for Canada and should we join the Americans? First, there are negative consequences to not participating in National Missile Defence. It is my opinion that with people like Kim Jong Il of North Korea in this world — by all accounts a paranoid psychotic in control of ballistic missiles and likely five nuclear weapons — that a limited ballistic missile defence system is a rational approach to dealing with the threat posed by such "rogue states." When North Korea launched a Taepo Dong in August 1998, even the Russians — their supposed friends — put missile carrying destroyers to sea. North Korea's closest ally, China, expressed concern and urged good behaviour, and Japan talked of pre-emptive attack.

Let us not be deluded, honourable senators. I agree that a missile attack on Montreal is highly unlikely — but it is not impossible. What is likely, though, is that the Taepo Dong is lacking a reasonable guidance system. If targeted on Los Angeles, it could come down almost anywhere on the West Coast, including Vancouver, by plain and simple accident. It is not that we would intentionally be targeted — and I called him psychotic — but that we would be attacked by faulty equipment merely due to geographic proximity.

Further, if we do not participate, where do honourable senators think these missiles being shot down will land? Wyoming or Alberta? We are either part of National Missile Defence or we are outside.

Historically, Canadian governments have known that Americans will violate our sovereignty in the air and sea to protect theirs. Mackenzie King knew this when he opted to maintain a small navy for coastal patrol. King made sure that it was just large enough to keep the Americans happy. Former prime minister Trudeau realized this in the strategic anti-submarine warfare debate. NORAD, in a simplified way, was developed to ensure that if our sovereignty was to be violated, at least we were in on the planning details. NORAD is either in National Missile Defence or out. What do honourable friends think will happen to NORAD if we do not play a part in this program? We already do not carry our fair share of the defence burden. Ask New Zealand what it is like to sit blind without American assistance. They opted out of the joint defence agreement between Australia, New Zealand, the U.S., the U.K. and Canada. About 18 months ago, after sitting on the outside for a few years, they found their way back into the arrangement. Why? Because going it alone means just that: You go it alone. It is not a lot of fun.

On the other hand, there are very positive consequences to being involved in National Missile Defence. Participating in National Missile Defence gives us a voice at the table and allows us to sit in on the planning. The Americans will deploy whether we like it or not. Canadian involvement gives us a chance at diplomacy. Otherwise, we are telling a sovereign state how to make its defences. Canadians know how we feel about outsiders telling us how to spend our defence dollars. We remember Minister Axworthy's outrage over NATO Secretary General Robertson's visit to Canada and the call for more defence spending.

Honourable senators, I ask you to think about the most important reason to become involved. Consider the productive diplomatic leverage we could exert on our closest ally and major trading partner if we said that we fully support their non-nuclear defence effort, but we are prepared to do so only if it is in conjunction with a demonstrated commitment on their part to reduce reliance on offensive nuclear weapons. Our enthusiastic participation and global diplomatic efforts in support of their initiative will depend on meaningful movement on their part on such matters as initiation and ratification of START III, with a significant reduction of defensive nuclear weapons, and ratification of the Comprehensive Test Ban Treaty. Furthermore, our participation would include encouragement for other initiatives, such as support — and I say this advisedly — in rebuilding Russia's early warning satellite system, and consideration of basing similar National Missile Defence systems near other threatened nations, such as Russia and China, to enhance their security and remove the cause of nuclear defence.

Thus, Canada would certainly not be seen by our citizens as the lackey of the Americans but, rather, as a "tough love" partner, if you will. The Americans are prepared to develop the NMD without the support of Canada. However, from their recent pronouncements, they would very much like to have us on board. We should do so, but we should use the opportunity to present to them constructive conditions which most Americans would support and which I further suggest most U.S. government officials would probably welcome in order to get themselves off that "top dead centre" on this very important issue. This requires diplomacy — real diplomacy and not sticking the Canadian finger in the American eye.

In conclusion, honourable senators, we in the West, very much including Canada, have lived under the threatening shadow of two superpowers heavily armed with deadly, offensive nuclear weapons aimed at each other. Our security depended on the threat of massive retaliation that would escalate a nuclear exchange into a global disaster. The concept was suicidal, and we all knew it. In 1983, even the Conference of American Catholic Bishops had difficulty dealing with the nuclear paradox that finally emerged. They finally concluded that while it may be rational to deploy retaliatory nuclear weapons and even moral to threaten to use them if that would prevent aggression, it would be both irrational and immoral to actually use them. Not only because I am a Catholic, but as a responsible citizen I must agree with the bishops' conclusion in their 1983 pastoral letter on the subject.

• (1750)

How do we break the deadlock? Let us make no mistake. The threat was and continues to be offensive nuclear weapons. Therefore, the challenge to restoring sanity and a modicum of safety is to do everything possible to shed dependence on these

offensive nuclear weapons and find other means to ensure our security. That is exactly what the non-nuclear National Missile Defence system is all about. It is clearly in Canada's national interest to support the American non-nuclear defence initiative, and to help them escape their dependence on offensive nuclear weapons.

Thank you for your indulgence, honourable senators.

**Hon. Nicholas W. Taylor:** Honourable senators, I have a couple of short questions of clarification. I am not sure I understand the difference between a "theatre" missile and a "national" missile. Senator Forrestall uses the two words. I think the honourable senator said that this particular missile is a national one and not a theatre one, or did I get it backwards?

**Senator Forrestall:** What it proposes, of course, is that there are two systems. One is a high-altitude system; the other is a marine-based system. We are talking about the difference between a strategic system and a theatre system. A theatre system is in this room; strategic is Parliament Hill, or all of the country in other words. That is the context. When you look at the treaties that were involved, and what we are attempting to foster as part of the Canadian culture and phenomenon, we are looking at non-nuclear defence systems.

This is a projectile that travels at such an extraordinary speed that it does not need dynamite. It sure does not need nuclear detonation to render the system ineffective. That basically is the difference.

On motion of Senator Taylor, debate adjourned.

[Translation]

## ADJOURNMENT

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, May 2, 2000, at 2:00 p.m.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Some Hon. Senators:** Agreed.

Motion agreed to.

The Senate adjourned during pleasure.



**ROYAL ASSENT**

Her Excellency the Governor General of Canada, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, Her Excellency the Governor General was pleased to give the Royal Assent to the following bills:

An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act (*Bill C-6, Chapter 5, 2000*)

An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts (*Bill C-13, Chapter 6, 2000*)

An Act to give effect to the Nisga'a Final Agreement (*Bill C-9, Chapter 7, 2000*)

The House of Commons withdrew.

Her Excellency the Governor General was pleased to retire.

The sitting of the Senate was resumed.

[English]

• (1810)

**VISITORS IN THE GALLERY**

**The Hon. the Speaker:** Honourable senators, before I ask for the adjournment motion, I wish to call your attention to visitors in our gallery from the Nisga'a Council, led by their elders.

We also have in our gallery Dr. Henry Friesen, President of the Medical Research Council of Canada, who was interested in Bill C-13, which received Royal Assent today.

On behalf of all honourable senators, I bid you all welcome to the Senate of Canada.

**Hon. Senators:** Hear, hear!

The Senate adjourned until Tuesday, May 2, 2000, at 2 p.m.





**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
 (2nd Session, 36th Parliament)  
 Thursday, April 13, 2000

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	0	99/12/16		
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02	00/04/04	Transport and Communications					
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21	00/04/04	Foreign Affairs					
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21	00/04/06	Banking, Trade and Commerce					

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29	00/03/28	Legal and Constitutional Affairs	00/04/13	0			
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99

C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	99/12/06	Subject matter 99/11/24	99/12/09	00/04/13	5/00
		99/12/06	99/12/07	Social Affairs, Science and Technology			2
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/17	Legal and Constitutional Affairs	99/12/08	00/03/30	1/00
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	Aboriginal Peoples	00/04/13	00/04/13	7/00
C-10	An Act to amend the Municipal Grants Act	00/03/28	00/04/10	National Finance			
C-13	An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts	00/03/30	00/04/04	Social Affairs, Science and Technology	00/04/10	00/04/13	6/00
C-20	An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference	00/03/21					
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	-	99/12/16	99/12/16	36/99
C-23	An Act to modernize the Statutes of Canada in relation to benefits and obligations	00/04/12					
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23	00/03/28	-	00/03/29	00/03/30	3/00
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23	00/03/28	-	00/03/29	00/03/30	4/00

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0	00/03/21	00/03/30	2/00
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							
C-473	An Act to change the names of certain electoral districts	00/04/10							



## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology					
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs					
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders					
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02							
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03							
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.) <i>(Dropped from Order Paper pursuant to Rule 27(3) 00/02/08)</i> <i>(Restored to Order Paper 00/02/23)</i>	99/11/04							
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18							
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance					
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16							
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimard)	00/02/22							
S-20	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	00/04/05							

## PRIVATE BILLS

S-21	An Act to protect heritage lighthouses (Sen. Forrestal)	00/04/12							
No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	-	-	-	99/12/08	00/03/30	



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OFFICIAL REPORT  
(HANSARD)

**Tuesday, May 2, 2000**

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**THE HONOURABLE ROSE-MARIE LOSIER-COOL**  
**SPEAKER PRO TEMPORE**

This issue contains the latest listing of Senators, Officers of the Senate, the Ministry, and Senators serving on Standing, Special and Joint Committees.



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## THE SENATE

Tuesday, May 2, 2000

The Senate met at 2:00 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### THE LATE HONOURABLE RICHARD A. DONAHOE, Q.C.

#### TRIBUTES

**Hon. Lowell Murray:** Honourable senators, I have the sad duty to record the death, on Tuesday, April 25, of our former colleague the Honourable Richard A. Donahoe. Richard Donahoe was elected mayor of Halifax during the 1950s, was five times elected to the Nova Scotia legislature and, from 1979 until his retirement in 1984, was a member of the Senate.

In provincial politics, Richard Donahoe served in the governments of Premier Robert L. Stanfield and Premier G.I. Smith as attorney general and minister of public health. In the latter capacity, he is best known for having successfully guided the implementation of both the National Hospital Insurance Plan in the late 1950s and of medicare in the late 1960s in his province.

Richard Donahoe was a wonderful orator and also a keen judge of oratory. From time to time in my youth, I found myself a small part of a supporting cast of speakers at some of those marathon political meetings in Nova Scotia where Dick Donahoe was usually the main attraction. It was a somewhat intimidating experience. For five years here in the Senate, whenever I spoke, I was aware of his attentive eye and ear. Even today, it is with some trepidation that I begin. Let there be no doubt — he expects us to rise to this occasion.

His funeral last Saturday was at St. Mary's Basilica in Halifax. In that same church, 105 years ago, the requiem was for Sir John Thompson, sometime premier of Nova Scotia and fourth prime minister of Canada. There, 46 years ago, the bells tolled for the Honourable Angus L. Macdonald, premier through five elections and Canada's minister of the navy during World War II. Not far away is Government House, where Joseph Howe, the father of responsible government, died in 1873, and Camp Hill Cemetery, where he is buried. At St. Paul's Anglican Church, at the other end of Barrington Street, funeral services were held in 1915 for Sir Charles Tupper, premier of Nova Scotia, father of Confederation and sixth prime minister of Canada. On an occasion such as Saturday's, one is conscious of being surrounded by history.

Last week, Richard Donahoe joined this political pantheon and there he belongs, now part of the proud political history and tradition of Nova Scotia. He was a greatly gifted and great respected public man. He was much beloved, especially by the rank and file of the Progressive Conservative Party. Personally and from my earliest days as a political partisan, I recall his kindness, thoughtfulness and encouragement to me and to other Progressive Conservatives in Nova Scotia.

• (1410)

The funeral service was, as they say nowadays, quite "upbeat." It was the mass of the resurrection, the Easter service, really, with great music, including a Celtic harp and the choir from Senator Carstairs' old school. Two former archbishops of Halifax conducted the service.

It is no disrespect to the liturgy to say that it was also quite a political occasion. Many of Nova Scotia's leading political figures from the recent past and present were there, and probably a few of the future leaders as well. I saw people there with whom Dick Donahoe had clashed memorably over the years, some of them Conservatives. They were all there to pay a respectful and affectionate farewell.

The luck of the Irish had been with Dick Donahoe more than 60 years ago when he met and married a Cape Bretoner, Eileen Boyd. She was there Saturday with her children and grandchildren.

Altogether, I think the send-off was appropriate to his life, blessed by the church and surrounded by friends and colleagues in the city he loved and served. Dick would have found no fault in the service, and I hope only that he will find none in telling of it. It was always a great experience to have been in Dick Donahoe's company, and I am honoured to have known him.

**Hon. B. Alasdair Graham:** Honourable senators, I join with the Honourable Senator Murray in paying tribute to our colleague the Honourable Richard A. Donahoe. The passing of former senator Donahoe was, as indicated by Senator Murray, deeply mourned at his funeral in Halifax last Saturday. As his life was properly celebrated.

The great Tory warrior, whose tireless passion for public service was the engine of his long and distinguished career, led a life far larger than most of his contemporaries. His was a gigantic in generosity, voluminous in achievement, magnificent in its impact on all of those he touched in this world.



Yes, former senator Richard Donahoe was always larger than life. Whether as mayor of his beloved native city of Halifax, or as minister of health and attorney general in the Stanfield and Smith governments, or as a member of this chamber from 1979 to 1984, Dick Donahoe brought the power of his presence to many of the great issues of our time, including one of which he was most proud — a leading role in the implementation of medicare in Nova Scotia.

A deeply conservative, partisan patriarch of a large, talented and politically committed Nova Scotia family — with the good sense to marry a Liberal, I might add, the beautiful and accomplished Mary Eileen Boyd — Dick remained always the fiery and convincing patriot to his city, to his province, to his country, to his church and to his wonderful Irish inheritance.

Indeed, Dick Donahoe always represented to me many of the fine qualities which are part of that inheritance. He was quick-witted and gifted with a commanding presence. He was eloquent and a champion of all his beliefs. He had a gift for phrases that lingered in the minds of all those who heard him. Dick's wonderful, deep, baritone voice spoke out always for what he saw to be true, for what he saw to be right, and spoke out over the decades for his cherished city, his beloved province, and always in the interests of the public service of his country.

Honourable senators, Dick Donahoe was a great debater in this chamber. I remember that we exchanged words on a particular issue upon which we had a difference of opinion and, as we were walking out, he said, "Al, you sounded great, but what in the name of God did you say?"

When I think of Dick and Eileen today — because this was not only a marriage of love and real devotion but also a powerful political partnership that lasted 63 years until his death last week — I think of the dreams and the accomplishments of their long life together, of the family they raised, and the roots they so deeply nurtured and cherished. It is worthy of note that their two sons went on to distinguish themselves in the life of Nova Scotia politics — Terry as both Minister of Education and Attorney General; Arthur, as Speaker of the House of Assembly, and today he holds the important position of Secretary-General of the Commonwealth Parliamentary Association.

Honourable senators, in honouring the memory of our former colleague, I think of the magic of the words of W.B. Yeats, the visionary Irish poet who himself devoted much of his time and energy as a senator to the Irish Free State. In one of his finest pieces, the senator wrote:

I will arise now and go to Innisfree...I hear lake water lapping with low sounds by the shore...I hear it in the deep heart's core.

Dick Donahoe had a heart that was as deep as his conviction and the devotion to the people he touched throughout his life. It was Bobby Kennedy who once said that each time a man stands

up for an ideal or acts to improve the lot of others or strikes out against injustice, he sends forth a ripple of hope.

Honourable senators, although the golden voice is now silenced, the ripples of former senator Richard Donahoe's life and times will always be with us.

To his beloved wife, Eileen, to his children and to his extended family, we extend an expression of the deepest sympathy.

**Hon. J. Michael Forrestall:** Honourable senators, I wish to join with Senator Graham and Senator Murray in expressing my thoughts on the passing of Dick Donahoe. I want at the outset to express my sympathies to his family, to his children, his grandchildren and his very large and growing family.

I have known and worked with Dick Donahoe since 1957, when I was working with the party in those days. It was said of Dick that if he did not know you, he knew someone in your family. That is sort of gospel in that it says something of the man who cared, yes, about his city, his church, his family, and his province, but above all he cared for all of the people in that charge.

● (1420)

He was a great Nova Scotian. The Honourable Richard Donahoe practised law in Halifax after graduating from Saint Mary's University and Dalhousie University. He spent the rest of his life as a tireless supporter of that former institution. He served on the board of governors of Saint Mary's from 1965 to 1971, and was granted an honorary doctorate of law at the very university that had nurtured his youth, spiritually and academically.

He was a very prominent member of the Knights of Columbus, having joined that august organization the year that I was born, 1932. He dedicated, through that organization, as with all other organizations with which he associated himself, hours, months and years to works of charity, so much so that the Pope conferred upon him, in 1969, the order Knight of St. Gregory the Great.

His dedication to his community, his province and his country is admirable. He was first elected as a city alderman in 1951, was elected mayor of Halifax in 1952, and by acclamation in 1953 and 1954, a sign of his real and great popularity with the citizenry of Halifax.

He then turned his hands, as Senator Murray has said, to provincial politics, when he ran in a by-election in 1954 and won. He ran in the general election of 1956, 1960, 1963 and 1967. As has been mentioned, he served as attorney general and minister of public health under the then premier, the Honourable Robert L. Stanfield, another great Nova Scotian. He continued to serve in the cabinet of Premier George Isaac Smith.

Dick Donahoe had a leading role — if not the lead roll — in bringing two great medical care programs to the people of our province.

Lastly, he was appointed, as we all know, to the Senate in 1979, serving until his retirement, a life-long member of the Progressive Conservative Party and a protector of his beloved home province.

Today, the Donahoe family name has a recognition within the province, a name intertwined and forever locked now in the hearts of our province's great history. He was a good friend, good counsel, someone with whom I was proud to be associated in the service to people and service to the Province of Nova Scotia.

I wish to send my heartfelt sympathies to his dedicated and loving wife, Mary Eileen, and to his sons, Arthur and family, Terry and family, two great Nova Scotians themselves who have contributed much and have much more to contribute. They learned well from their father. I also send my heartfelt sympathies to Kathleen Niedermayer, Sheila and family, Nora and family, Ellen Feenan and family, and his sisters, Edith Power, Geraldine Curran, Muriel Duxbury, and brother Frank, and innumerable grand and great grandchildren.

Dick Donahoe's life was worth sharing. It was in his practice of concern and care for people and the worth and dignity of the individual through which he planted his finest seeds.

To the Donahoe family, those seeds are now growing and they look pretty good to me.

**Hon. Sharon Carstairs:** Honourable senators, the Donahoe and Connolly families have a long history in the City of Halifax. I know my family, the Connollys, would wish me to say a few words on the passing of a distinguished man, a politician, a noted orator, and a member of great distinction of the charitable Irish Society of Halifax.

Honourable senators, I was six years old, as was Kathleen Donahoe, when our fathers, Harold Connolly and Richard Donahoe, ran against each other in the 1948 provincial election in the constituency of Halifax North. In that contest, my father was the winner, but it did not affect our friendships, either between Mrs. Donahoe and Mr. Donahoe, or Mr. Connolly and Mrs. Connolly, as of course, we as children referred to our elders in those days.

Kathleen and I continued to walk to Oxford Street School together. Her brothers, Arthur and Terry, were friends and classmates of my brothers, David and Dennis. Both Arthur and Terry, as most of you have already heard, had distinguished political careers themselves in the Province of Nova Scotia. Dennis and I became politicians, too, and, like our fathers, on opposite sides. Because of the examples set by our respective fathers, politics was a logical choice. It was, I would suggest to you, a more civilized time in politics, the passage of which I regret very deeply.

Dick Donahoe — and he was known as "Dick" to most of his friends, not "Richard" — was appointed to the Senate in 1979. It

was my father's resignation from the Senate that caused the vacancy to which Dick Donahoe was appointed. Dick's appointment to the Senate was greeted with celebration in the Connolly household. After all, we recognized it had to go to a Tory because the prime minister of the day was a Tory. Therefore, what better Tory to have it go to than Richard A. Donahoe?

Mr. Donahoe, as I always called him, also had a distinguished career as an alderman, as the mayor of Halifax, as a province cabinet minister, particularly in the health portfolio — public health, as it was referred to then — and also as the attorney general of the province.

I wish to express my sincere sympathies to the whole Donahoe family. They are our friends — friends of the Connollys. They mourned with us the loss of our parents. We mourn today the loss of their father.

**Hon. Donald H. Oliver:** Honourable senators, I wish to join other honourable senators in commenting briefly on the extraordinary life of the Honourable Richard A. Donahoe of Halifax.

He was the embodiment of the public service. He was, for his adult life, a servant of the people, as mayor of the City of Halifax, then as a provincial cabinet minister in the government of Robert Stanfield and others, and finally here as a member of the Senate of Canada.

He and his family have been close friends of mine for more than 44 years. It was through Senator Donahoe, his son Arthur and others, like Mr. Stanfield, that I was strongly influenced toward the values, principles and philosophy of the Progressive Conservative Party.

Richard A. Donahoe was the embodiment of a man, a conservative, a Progressive Conservative with a social conscience directed intuitively to helping the less fortunate, to using the power of politics to equalize opportunity for Canadians. His work in bringing a modern and equitable medical care system to Nova Scotia is but a small part of his important legacy of public service.

I was honoured to have known him. To his widow, Eileen, and children, particularly Arthur, Terry and Sheila, whom I knew well, I express my deepest condolences.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, with your indulgence, I very much want to say a few words in tribute to a great Nova Scotian.

Dick Donahoe was an honourable man, unashamedly patriotic, gifted, unselfish, and Irish. He loved his God, his family, and his province, and on those three cornerstones of his life I am told he would never compromise.



• (1430)

History shows that he was also not a man easily discouraged. Once he set a course, there was little that could resist his determination. Despite his questionable political background, he was able to woo and win Mary Eileen Boyd, who not only came from one of the strongest Liberal families in Cape Breton but who worked as the secretary to then Liberal premier Angus L. Macdonald during the courtship. Rumour has it that she never cast another Liberal vote from that day on.

**An Hon. Senator:** Hear, hear!

**Senator Boudreau:** When Senator Donahoe was elected to the legislature in 1954, he became the first Conservative elected from Halifax County in 26 years, but that election did not come easily. His victory followed four unsuccessful attempts at public office, at municipal, provincial and federal levels — another measure of the man's determination.

Dick Donahoe played a major role in bringing together a distinguished group of Nova Scotians who, in 1956, under Premier Robert L. Stanfield, won the general election and subsequently provided solid, honest and competent government to our province for almost 15 years.

When that team was assembled in 1956, with the path broken and conditions for victory significantly advanced by his 1954 breakthrough, my father was one of those impressed and persuaded to run for office by Senator Donahoe. I can still remember, as a young boy, the admiration and respect that my father had for him. He was quoted often in our home during that campaign of 1956. My father lost that election, beginning an unbroken tradition of political defeat in our family until my election in 1988. I attribute that, in part, to the fact that I was the first member of my family ever to seek office as a Liberal.

When I arrived in the Nova Scotia House of Assembly, two of the first people to make me feel at home were Dick's sons, Art Donahoe, as Speaker, and Terry Donahoe, who served in the cabinet of Premier John Buchanan. Decent, able and principled servants of the people in the mould of their father, I am certain they made him proud.

Others who have spoken today knew Senator Donahoe far better than I, but I have seen his tracks in Nova Scotia and I have felt his legacy. His standard of competent, unselfish and caring public service remains a daunting standard for all of us who would follow.

Honourable senators, Nova Scotia has lost a distinguished citizen, the Donahoe family a loving husband, father and grandfather. My heartfelt sympathy is with them, along with my thanks for sharing him with the people of the province he loved.

## SENATORS' STATEMENTS

### HOLOCAUST MEMORIAL DAY

**Hon. Erminie J. Cohen:** Honourable senators, today we observe Yom Hashoah, Holocaust Memorial Day. I wish to express my gratitude and respect to the survivors of the Holocaust. Yom Hashoah, which means "day of fire," is an annual tribute to the memory of the 6 million men, women and children who perished during the Holocaust and is the official day of mourning for Jews around the world.

The pain and suffering that was inflicted on the Jewish people and other selected groups is incomprehensible, yet we must understand that it was rooted in the hatred of its perpetrator and in the complacency of those who looked on and did nothing.

It is also a time to pay homage to the many "righteous gentiles" who, at their own peril, rescued and cared for thousands of Jews during those black, painful years.

Honourable senators, the period between 1933 and 1945 witnessed a total devastation perhaps unequalled in all recorded history. Many Holocaust survivors have devoted their lives to ensuring that people never forget the monstrosities that were allowed to happen, and they continue to fight against those who deny the Holocaust ever existed. However, passive recollection is not enough, and the memory of the Holocaust should provide the impetus for active opposition to racism and hatred.

It is sad to say the world has not learned sufficiently well the tragic lessons of the Holocaust. There is much inhumanity around us: the atrocities in Bosnia; the slaughter of thousands of people in Rwanda, the Sudan and now Zimbabwe; and the ethnic cleansing in the Balkans. The rise of anti-Semitism and the insidious growth of hate groups are recent examples that underscore the deep-seated bigotry that begets hatred and violence.

Today, Yom Hashoah serves as a reminder of the millions who died in the death camps. It is our collective duty, as citizens of the world, to continue to educate and to speak out against the evils of hatred, violence and racism.

### CANADA BOOK DAY

**Hon. Joyce Fairbairn:** Honourable senators, I should like to draw the attention of the chamber to a very special occasion that took place last week when the house was not sitting. April 27 was the annual Canada Book Day, a project of The Writers' Trust of Canada. This is a day we celebrate each year in this chamber, and we do so in terms of four objectives that this day promotes: to celebrate the importance of the role of literature in Canada's past, present and future; to nurture the love of reading among our young people, particularly in our schools; to celebrate the international success of Canada's literature and our heroes; and to promote Canadian books and the people who write them.

Honourable senators, this is a good occasion for me to point out that if we did not have and were not promoting a culture of literacy and lifelong learning in this country, we would have a sad situation in terms of the work that our talented authors produce.

Because literacy is a cause that governs my life, it is with a sense of joy that I do as I have done for the last several years and give a book to a friend. My friend on Canada Book Day is Senator John Lynch-Staunton, and this year I have a special treat for him. It is a remarkable book by an author and an absolutely outstanding photographer from my home town of Lethbridge, Dr. Van Christou, who, it is said, paints with his camera lens. It is one of the few books that is totally about an area in which many members of Senator Lynch-Staunton's extended family live, that southwest corner of Alberta with its rolling hills and its mountains. It is called, in the words of our aboriginal people, *Land of Shining Mountains*, and it is a great pleasure for me to give it to the honourable senator today.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I ask for 24 hours to reply. I appreciate the gift, particularly as I realize that despite our efforts, particularly those of Senator Di Nino, Senator Fairbairn had to pay the GST on this book!

## NATIONAL DEFENCE

### REPORT ON SEA KING TALON41 INCIDENT

**Hon. J. Michael Forrestall:** Honourable senators, I wish to place on the record this afternoon something that may cause some of you to think and wonder. I certainly hope this is true of the Leader of the Government in the Senate.

I am referring to the report on the Talon41 incident. It is an official summary and I want honourable senators to listen to it. All times are approximate.

At 10:43, Talon41 crew begin to detect a distinct "waxy acid" smell in the aircraft. The crew suspected a possible electrical source and turned off all non-essential systems — that is, anti-ice, for example. The crew turned the aircraft in the direction of YAW, which is, of course, Shearwater. At this time, Talon41 was in dip sector 2, approximately 15 nautical miles south of the nearest point of land, or 29 nautical miles southeast of Shearwater.

• (1440)

At 10:45, two minutes later, the co-pilot noticed a fluctuation in the transmission pressure gauge, between 45 and 60 PSI. Talon41 then declared an in-flight emergency, known as a PAN. Talon41 then turned north to close the NPL, which is the nearest point of land, while continuing to monitor and look for secondary indications. Shark28, which is another Sea King, began to close Talon41 to shadow the aircraft back to Shearwater.

At 10:52, the transmission pressure — Tx. Press — continued to fluctuate and then dropped below the green operational limit. Shark28, now in escort of Talon41, radioed that they could see "considerable" fluids leaking down the left-hand side of the aircraft. TX pressure stabilized at 20 PSI — which is outside the operational limits. The crew decided to land as soon as possible in the Lawrencetown area. A mayday was sent. Talon41 at 10:52, to land as soon as possible.

At 10:58, the crew noticed the TX pressure drop to 15 PSI. The crew decided to land immediately. Shut-In Island was near and chosen as the landing spot.

At 11:01, Talon41 began the transition to land on Shut-In Island.

At 11:02, the crew saw the TX pressure warning light come on, indicating 12 PSI or less. Some grinding sounds were heard by the crew.

At 11:03, Talon41 landed on Shut-In Island.

At 11:11, Talon41 successfully shuts down and radios that crew and aircraft are okay. The left side of Talon41 sinks slightly into the soggy ground.

I will be asking some questions about that later.

## NATIONAL NATIVE ROLE MODEL AWARDS

**Hon. Mabel M. DeWare:** Honourable senators, on Friday, April 14, after most honourable senators and members of other place had left for the Easter break, Senator Willie Adams and I had the rare privilege of attending a very special ceremony at Government House. It was hosted by the Governor General of Canada, Her Excellency Adrienne Clarkson.

The ceremony honoured the newest recipients of the National Native Role Model Award. Madam Clarkson presented certificates to nine young people who have made some very impressive achievements in various fields. Their accomplishments are even more remarkable when you consider that each of them had overcome tremendous challenges and personal hardships to achieve the status that they have in their communities today.

I hope I can convey to you something of the sense of awe that I felt as I watched these fine young people being honoured at Rideau Hall. They were chosen as role models for aboriginal young people, yet they are truly an inspiration to us all. The contributions that they have made to their communities and our society enrich each and every one of us.

The National Native Role Model Program amplifies their contributions by enabling the award recipients to actively serve as examples of what young aboriginal Canadians can hope to achieve. During the next two years, these role models will visit aboriginal communities and share their talents and vision with thousands of young people.



The National Native Role Model Program receives funding from Health Canada and is administered through a national office located in Kahnawake, Quebec. It is a national health program designed to promote and encourage the adoption of healthy lifestyles based on the traditions of wisdom, love, respect, bravery, honesty, humility and truth among the First Nations and Inuit youth in Canada.

All of us who listened to the citations of the year 2000 award recipients felt a real sense of pride in knowing that Canada's aboriginal young people have such role models who can help make an important difference in their lives.

## ROUTINE PROCEEDINGS

### SPECIAL SENATE COMMITTEE ON BILL C-20

#### NOTICE OF MOTION TO APPOINT

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I give notice that, on Thursday next, I will move:

That a special committee of the Senate be appointed to consider, after second reading, Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec secession reference;

That, notwithstanding rule 85(1)(b), the committee be comprised of 15 members, including:

Senator Joan Fraser  
 Senator Céline Hervieux-Payette, P.C.  
 Senator Colin Kenny  
 Senator Marie P. Poulin (Charette)  
 Senator George Furey  
 Senator Richard Kroft  
 Senator Thelma Chalifoux  
 Senator Lorna Milne  
 Senator Aurélien Gill;

That four members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee.

## QUESTION PERIOD

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS— REPORT ON TALON41 INCIDENT

**Hon. J. Michael Forrestall:** Honourable senators, my question is for the Leader of the Government in the Senate.

A few moments ago I read a brief summary of the events surrounding an incident involving Talon41. I wonder if the minister has had an opportunity to read separately the incident summary. The events to which I refer took place in broad daylight, honourable senators, and in good weather. What would have happened to the brave crew in the dead of night and in bad weather?

I am no longer particularly interested in hearing about the maintenance regime. These aircraft are always safe as long as they are on the ground. That is excellent but not enough to ensure the reliability of these aircraft. I do not want to hear about safety and reliability being the minister's first priority, because action or inaction speaks louder than words.

I want to know precisely what the Leader of the Government will do this afternoon to get the Prime Minister to initiate the Maritime helicopter program.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am not familiar with the details of the incident that the honourable senator brings to the attention of the Senate this afternoon. However, I will contact, without delay, the minister responsible and ask him to provide details of this incident to me. Following that, I may be in a position to share those details with all honourable senators, to elucidate on the particular circumstances.

Other than giving that specific undertaking, I wish to say that the Prime Minister is very much aware of my ongoing views with respect to the Sea King helicopter replacement program. I also venture to say that he is familiar with the views of the honourable senator on this issue. The minister responsible, when visiting Halifax this past weekend, indicated publicly his views with respect to the priority of such a replacement.

• (1450)

The existing helicopters are old. They are complicated pieces of equipment.

**Senator Forrestall:** "Dangerous" is the word for them.

**Senator Boudreau:** We expect that the maintenance program now in place will ensure that the equipment remains safe for operation.

**Senator Forrestall:** Honourable senators, at the risk of being repetitive, those aircraft are safe, stable and wonderful — as long as they stay on the ground.

Will the minister go to the Prime Minister this afternoon and ask him to initiate this program? Do not listen to the Minister of National Defence because God knows that what he is saying has nothing to do with practicality, reality, care or concern. Would the minister please go to the Prime Minister and ask him to initiate the program before we have a death?

I ask the minister to think back to the Talon41 report. They had one minute to get to dry land. I ask the minister go to the Prime Minister and say to him, "For God's sake, Prime Minister, please initiate the program. Show some faith in the men and women who must fly these aircraft."

**Senator Boudreau:** Honourable senators, I can only reassure the honourable senator and others that the Prime Minister and the Minister of National Defence are concerned with the welfare of all individuals who serve our country in the Armed Forces, including those who fly Sea King helicopters. I am informed by the people who service them and by the senior military personnel who send those people out on the helicopters that, in fact, they are not putting their lives in jeopardy.

However, as we have said before, this is an old, complicated piece of equipment. Although I am not familiar with the details of this particular incident, it seemed that the competence of the crew and their expertise was able to bring it to a conclusion without tragedy.

**Senator Forrestall:** Honourable senators, I keep hearing that the minister will carry the message immediately to his colleagues later today. In such cases, I do not know whether the minister will send a memo to the Prime Minister's Office indicating the questions to which he has responded in the chamber about this incident. If that is the process, I request that the minister table in this chamber copies of all messages he sends to the Prime Minister about this particular program.

**Senator Boudreau:** Honourable senators, I would be very reluctant to indicate to the honourable senator that I will table documents which may have constituted discussion around the cabinet table. The conveyance of the honourable senator's views and, indeed, of my own, has been done by various means, all within the confines of cabinet confidentiality. I can assure the honourable senator that those views are made known on a regular basis.

**Hon. Gerald J. Comeau:** Honourable senators, I was surprised when the minister indicated that he was not familiar with the incident, even after it was carried in all of the media at that time in Nova Scotia and throughout Atlantic Canada. One must wonder where the minister was during that information session.

Honourable senators, I should like to point out that the minister and the government are being extremely irresponsible regarding this incident. They are sending the message that the Government of Canada condones sending people out in machines that are not safe to fly. The minister calls them old — we call them something worse. What kind of message is this sending to the Canadian public when they have to rely on examinations of commercial airlines by Canadian authorities?

I want the minister to realize the seriousness with which Canadians, especially Atlantic Canadians, view depending upon their government for safety. If the Canadian government cannot provide safety for its military, how can we depend on the government to take care of the safety of all Canadians?

**Senator Boudreau:** Honourable senators, I can only convey to the honourable senator the reassurance I have received from the people who are directly involved. I have had an opportunity to visit the site where these helicopters are maintained. I have spoken with those who work directly on the equipment and with senior officials in the company. I have spoken to other military personnel and to the minister. I can only give the honourable senator the assurance that I have received, that senior staff would not send military personnel out on a piece of equipment that they felt would endanger lives.

These incidents do occur. As a matter of fact, they occur with brand new equipment. In saying that, I am not minimizing the fact that this equipment is old and complex. It is subject, however, to incidents like this one from time to time which, again, was handled very professionally by the crew in this situation.

**Hon. David Tkachuk:** Honourable senators, many of us on this side of the house are quite disturbed. We do not understand why the government is so reluctant to address this important issue. I will be careful in what I am about to intimate. It seems to me that the government has been intransigent in this matter, as has been in other matters since the 1993 election. I refer, for example, to the supposed Pearson airport scandal and the purchase by Air Canada of airplanes in the supposed Airbus scandal. After being intransigent, they attempted to implicate the then prime minister in something which everyone now knows was totally false. They refused to withdraw their allegations of criminal behaviour. In this case we have aircraft that are falling out of the sky.

Is this because there is a lack in government policy or, perhaps, a reluctance on the part of the government to admit that they were wrong in cancelling the contract? The reason they are willing to sacrifice the lives of Canadian boys is that they are reluctant to admit that they were wrong in 1993, when they cancelled the contract for new government aircraft. They are reluctant, in fact, that they would rather fly a bucket of bolts at risk the lives of military personnel, whom we have an obligation to respect and protect. I believe that is why the government is acting in the stubborn manner in which it is behaving today.



**Senator Boudreau:** Honourable senators, I find it rather difficult to find a question in the honourable senator's statement. In fact, one might even describe it as a diatribe.

If the honourable senator is suggesting that the Prime Minister, the Minister of National Defence and senior military personnel are all involved in a massive conspiracy for political purposes to put Canadian servicemen's lives at risk on a daily basis, then I think he has gone way out in left field and overstated his argument. I can only assure him that any evidence I have received or any discussions I have had with senior people, many of whom are not politically involved, indicated to me that such is not the case.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the position of some of us on this side is simply that we believe the Sea King helicopters should be grounded. The position on the government side seems to be that the minister in this place and the Minister of National Defence say, "No, it is okay. They can continue to fly them."

Based on that, are the minister in this place and the Minister of National Defence prepared to resign, should there be another incident such as the one described in detail by Senator Forrestall?

• (1500)

**Senator Boudreau:** Honourable senators, I will repeat once again that indications from senior military personnel, senior civilian personnel, and from the Minister of National Defence himself are that the equipment is competent to do the job. No personnel is sent up in equipment that is known to put that serviceman in harm's way. That is the responsible answer to the question.

REPLACEMENT OF SEA KING HELICOPTERS—  
POSSIBLE EXAMINATION OF AIRWORTHINESS OF AIRCRAFT  
BY TRANSPORTATION SAFETY BOARD

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, perhaps I can phrase our concern in another way. Is it not true that if the Sea Kings were civilian rather than military aircraft and came under the jurisdiction of the Transportation Safety Board, they would have been declared unfit to fly and grounded a long time ago?

Basic knowledge of the criteria applied by the Transportation Safety Board and its equivalent in the United States indicates that aircraft are grounded on the slightest suspicion of the most superficial flaw. Here we have had years of chancy flying and all we get is the reassurance that the guys on the ground say it is okay. I would be more reassured if the minister would ask the Transportation Safety Board to examine these aircraft and give us a full report. The reassurances of the military are not enough.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I cannot speculate on what the situation might be in any of those hypothetical circumstances.

**Senator Lynch-Staunton:** They are not hypothetical; they are fact.

**Senator Boudreau:** I can tell my honourable friend that the senior military personnel who were charged with making these operational decisions are responsible people. They are concerned about the welfare of the people whom they command and we should allow them to do their job.

REPLACEMENT OF SEA KING HELICOPTERS—CLEARANCE TO FLY  
AIRCRAFT IN UNITED STATES AIR SPACE

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Can the minister advise this house whether the Sea King helicopter, when it can fly, is permitted to fly in American air space subject to the regulations of the Federal Aviation Administration?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I cannot answer that question. I will take it as notice and return with an answer.

REPLACEMENT OF SEA KING HELICOPTERS—  
REQUEST FOR REVIEW OF MAINTENANCE RECORDS BY  
TRANSPORTATION SAFETY BOARD

**Hon. J. Michael Forrestall:** Honourable senators, the answer to that question might spur some action.

It is quite true, honourable senators, that Talon41 was in good mechanical condition while it was sitting on the ground, but within the space of 10 minutes it went from being stable to being critically unsafe.

I hope that the Senate Subcommittee on Transportation Safety will pursue the question of who should have priority jurisdiction over the investigation of air incidents, in particular, in Canada.

Would the minister consider having a discussion with the Minister of National Defence, perhaps the Prime Minister, and perhaps other members of that military advisory group within cabinet with a view to inviting Mr. Benoit Bouchard, Chairman of the Transportation Safety Board, and his team to review the evidence provided to the Minister of National Defence by the maintenance staff, the very people who look after these aircraft, and to make such a review public so that we might have a properly informed debate on who is right and who is wrong?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, as I indicated in response to Senator Forrestall's first question some time ago, with respect to this particular incident, I will request that the Minister of National Defence supply me with what information he can and make it available to the honourable senator. I will include in that request all of the remarks that have been made by Senator Forrestall and other senators today during Question Period.

REPLACEMENT OF SEA KING HELICOPTERS—  
CLEARANCE TO FLY PRIME MINISTER IN AIRCRAFT

**Hon. Marjory LeBreton:** Honourable senators, would the Royal Canadian Mounted Police, who are responsible for the personal security of the Prime Minister, allow the Prime Minister to fly in a Sea King helicopter?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, that is what we refer to as a hypothetical question.

**Senator Kinsella:** The question is operational in nature.

**Senator Boudreau:** I am sure that the Prime Minister would be interested in knowing that the honourable senator is concerned about his flight arrangements. I will pass that concern along to him.

REPLACEMENT OF SEA KING HELICOPTERS

**Hon. Brenda M. Robertson:** Honourable senators, I should like a simple answer from the minister, please. Why is the government so reluctant to replace these worn out helicopters? Everyone down East knows that they should not be in the air. They should have been gone years ago. What is going on? Does the government not care?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I take exception to the my honourable friend's premise that everyone knows that these aircraft should not be in the air. That implies a level of irresponsibility on the part of many people who are directly involved in the operational requirements of these aircraft.

THE SENATE

REPORT OF SPECIAL JOINT COMMITTEE ON CODE OF  
CONDUCT—GOVERNMENT RESPONSE

**Hon. Donald H. Oliver:** Honourable senators, my question is directed to the Leader of the Government in the Senate and deals with allegations of conflict of interest. It arises from a story in today's *Globe and Mail*. It is entitled "Senator denies conflict of interest, Bell links past ties with rival and membership on communications subcommittee." The article by Lorne Surtees, which my honourable colleague will have read, states:

Senator Michael Kirby has dismissed suggestions from Bell Canada that past ties with AT&T Canada Enterprises Inc. and his membership on a Senate subcommittee on communications put him in a conflict of interest.

As the Leader of the Government will know, in March of 1996 a Senate and House of Commons committee adopted resolutions, which included the following:

That a Special Joint Committee of the Senate and the House of Commons be appointed to develop a Code of Conduct to guide Senators and Members of the House of Commons in reconciling their official responsibilities with their personal interests, including their dealings with lobbyists;

Later, as the honourable minister will know, a report of the special joint committee was tabled in this house.

When, if ever, will the minister act on that report? Does he think that acting on a report such as that, which outlines ways in which allegations such as this can be dealt with fairly, is an appropriate way to proceed? Does the minister not understand that failure to act is doing a disservice not only to this chamber but to individual senators?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the Honourable Senator Oliver raises a very interesting point and I should like an opportunity to review some of the information. It might be helpful if I referred the question to the chairman of the Rules Committee so that it can be addressed specifically, perhaps with whatever information the senator can contribute. I will reserve my response until I review the matter in more detail.

**Hon. Jack Austin:** Honourable senators, Senator Kirby wrote to me, as Chairman of the Standing Committee on Privileges and Standing Rules and Orders, raising the question of conflict of interest with respect to both his directorship on a company known as Extencare, which question was raised relative to his chairmanship of the Standing Senate Committee on Social Affairs, Science and Technology, and with respect to AT&T Canada, where he served as a director up until two years ago. I asked in his letter that the committee undertake a review of the appropriateness of service on committees by senators.

Honourable senators will recall that when Senator Kirby was chairman of the Banking Committee, three or more senators were directors of banks and other financial institutions. In that case the procedure used by the Banking Committee was a policy of transparency and disclosure of all interests.

• (1510)

Honourable senators, the Standing Committee on Privileges and Standing Rules and Orders has a meeting tomorrow to examine this question raised by Senator Oliver. I would welcome your presence there.

**Senator Oliver:** I thank Senator Austin. May I ask that the committee consider the report of the Special Joint Committee on Code of Conduct that has been tabled in this chamber and in the House of Commons? It is a report that might help shed some light on this problem. I would direct Senator Austin in particular to two of the purposes set forth in the official report that was tabled in this chamber, which read as follows:



The purposes of the Code of Official Conduct are:

1. to recognize that service in Parliament is a public trust;

...

3. to reassure the public that all Parliamentarians are held to standards that place the public interest ahead of Parliamentarians' private interests and to provide a transparent system by which the public may judge this to be the case;

**Senator Austin:** I thank Senator Oliver. In fact, that document is one of the documents that will be placed before the committee tomorrow afternoon.

[Translation]

## NATIONAL DEFENCE

### PROPOSAL TO DEVELOP BALLISTIC MISSILE DEFENCE SYSTEM WITH UNITED STATES—GOVERNMENT POSITION

**Hon. Roch Bolduc:** Honourable senators, the Americans plan to deploy a limited system of defence against ballistic missiles that might be launched by certain countries. Has the Government of Canada taken a firm position on this matter?

[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, with respect to that possibility, I understand that certain plans are being considered in the United States. As I understand it, the Government of Canada has not taken a position in that respect. Perhaps I may be able to provide better information shortly, but at the moment I am unable to give any more detail, except to say that to date, I believe the minister has not yet taken a public position on that issue.

[Translation]

**Senator Bolduc:** Honourable senators, I should like to put the question in greater detail. On the one hand, the Government of Canada says it has not taken a position. On the other, the Minister of Foreign Affairs stated in his speech to the UN Security Council in New York that he was opposed to such an agreement. Meanwhile, the Minister of Defence, without necessarily being opposed to an agreement, did suggest the situation be looked into.

This is an irresponsible attitude on the part of the Minister of Foreign Affairs. Without any debate, without any decision by cabinet, the government suddenly announces that it is opposed, without any knowledge of the repercussions its decision will have on Canada's participation.

The Americans are not asking us for money, nor are they asking us to take part. They have, in fact, asked for nothing. There is something wrong here, it seems to me. Could it be the

minister's activism, which compels him to talk about anything and everything? How can one conceive that the Minister of Foreign Affairs, without any clue about what it is all about, would voice his opposition to an agreement before the United Nations Security Council?

This is a limited defence system. This is not what President Reagan wanted, but something completely different, a serious matter involving a 1972 treaty with the Russians. The minister says he is against the agreement and the government says it has not taken a position. Just how does the Government of Canada operate?

[English]

**Senator Boudreau:** Honourable senators, the issue that the honourable senator raises is one on which at least, as he points out, two ministers have made some comment. I would prefer to have an opportunity to clarify the current position of the government and return to this chamber with some specific information for the honourable senator.

## RESEARCH AND DEVELOPMENT

### REQUIREMENT THAT FEDERAL RESEARCH GRANTS HAVE PRIVATE-SECTOR PARTNERS—EFFECT ON AREAS WITH NO COMMERCIAL INTEREST

**Hon. Mira Spivak:** Honourable senators, Dr. David Schindler is a world-renowned scientist, who was twice honoured in Europe. He made Western Canada his home decades ago when the Department of Fisheries and Oceans lured him from the United States.

Dr. Schindler was recently in Washington to attend the annual meeting of the American Association for the Advancement of Science to explain to fellow scientists what has happened to research in this country. He described to them the Canadian government's Industrial Innovation Strategy, which now requires that most federal grants have a private-sector partner — no commercial partner, no research money.

John Polyani, the Nobel laureate at the University of Toronto, has warned that industry now has a stranglehold on research. Dr. Schindler left the Department of Fisheries some years ago and has been guiding young scientists at the University of Alberta. Today his research on pesticide contamination in supposedly pristine lakes in the Rockies is stymied. No chemical company wants to go there. Therefore, federal research grants are unavailable.

My question to the Leader of the Government in the Senate is this: First, has the government considered the consequences of this approach to research, given these warnings of our most respected scientists? Second, has the government considered loosening the criteria for research so that someone like Dr. Schindler can examine a very important question, namely, the contamination of lakes in the Rockies?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, perhaps in making those comments Dr. Schindler may not have been addressing his mind to some of the very significant programs announced in the last two budgets of the Government of Canada. There has been a requirement to match funds, but that requirement is not strictly limited to the private sector. If that were the case there would not be much going on in some places like parts of Atlantic Canada, where the private-sector commitment to research and development is not large.

I will give you two examples of massive programs. There is the Canadian Foundation for Innovation, which received \$900 million last year and another \$900 million in this year's budget — \$1.8 million directed toward research and development. There is a matching requirement in there, but it is not necessarily for industry. Universities have matched funds and, indeed, provincial governments have set up matching funds. As a result, a great deal of research and development has been done across this country.

If you look at another major initiative in the budget, namely, the Chairs of Excellence, \$900 million has been devoted to securing 2,000 of the best and brightest researchers in the world to come to Canada, not only to support them in terms of their presence, salaries, but with respect to equipment and other things.

Those two huge programs will have an incredible impact on the level of research and development and, perhaps, may even be of use to the particular gentleman to whom the honourable senator referred.

**Senator Spivak:** Honourable senators, I recognize the very important initiatives that have come forward. In fact, Dr. Henry Friesen and I believe one of our colleagues here were instrumental in lobbying the government. I certainly think these are notable achievements. However, I am not sure that what the leader is saying will assist the gentleman. Is that the Leader of the Government's final answer?

**Senator Boudreau:** Honourable senators, with new and exciting government programs, large commitments of money to research and development coming on stream now with virtually every budget of this Liberal government, of course that is not my final answer. There will be more exciting programs, and a larger commitment. I am sure, in the next budget and in the budget after that.

**Senator Spivak:** Honourable senators, I have a supplementary question. I do hope that, since Dr. Schindler is one of our stars, as is John Polyani, the minister will convey to the powers that be this particular situation that confronts Dr. Schindler in his

research on pesticides in lakes in the Rockies. I should hope he would use your good offices to do that.

• (1520)

**Senator Boudreau:** I would say to the honourable senator that I will use my good offices, as she points out, to convey that.

Many universities all across this country will be searching for those 2,000 people. If there are quality people doing solid research, they will have plenty of opportunity, both from the Chairs of Excellence and from the Canadian Foundation for Innovation.

[Translation]

## PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker pro tempore:** Honourable senators, I should like to introduce to you the pages from the House of Commons who will be in the Senate this week.

[English]

Sonja Harrington is from Ottawa. She is pursuing her studies at the Faculty of Public Affairs and Management at Carleton University and is majoring in international business.

We also have Cheryl Kawaja of Port Hawkesbury, Nova Scotia, who is enrolled in the Faculty of Public Affairs and Management at Carleton University. She is majoring in journalism.

Welcome to the Senate.

## ORDERS OF THE DAY

### ELECTIONS BILL

THIRD READING—DEBATE ADJOURNED

**Hon. Dan Hays** moved the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

He said: As there are other honourable senators who wish to speak at third reading, I will take my place and see if that is the case.

**Hon. Donald H. Oliver:** Honourable senators, I wish to speak but not today. Therefore, I will take the adjournment of the debate.

On motion of Senator Oliver, debate adjourned.



[Translation]

**BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming the debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Céline Hervieux-Payette:** Honourable senators, Canada is a magnificent country and a strong federation. It is the envy of many nations because of its tolerance and the fact that it engages in dialogue to resolve differences. It can sometimes happen, however, that events and a desire for urgent action can hasten changes before time has been taken to consider all the factors involved. The purpose of Bill C-20, the clarity bill, is to protect the rights of all Canadians during a referendum that could result in negotiations on separation. I therefore believe that this bill is as important as it is necessary and I support it without reservation.

Quebecers could not answer the questions asked during the 1980 and 1995 referendums by a simple yes or no. These were complex questions involving options that were not clear. Their ramifications were difficult, if not impossible, to assess. The leaders of the separatist movement had formulated the questions so as to let voters think that secession was not really separation from Canada, when the intention was in fact to destroy such a beautiful country with all it has to offer.

Let us remember that, in both cases, the questions asked were formulated unilaterally and adopted by the Péquiste majority, and imposed on provincial Liberals and, obviously, on the rest of Canada.

Should a nation such as ours be dissolved because the question is not clear? Of course not. Canadians have rights and freedoms and a quality of life unheard of in many countries.

The people of Quebec must not be allowed to lose these advantages because they have been taken in by flowery rhetoric. If, by misfortune, the government were to have to enter into negotiations on separation, it should do so only on condition that the population of the province of Quebec has clearly expressed its desire to no longer be part of Canada.

Following the 1995 referendum in Quebec, with its dubious question on sovereignty association, the issue of secession was

referred to the Supreme Court of Canada. In its opinion on the reference concerning the secession of Quebec, the Supreme Court confirmed the rights of citizens to be protected against any unilateral attempt to proceed with secession and stated that there is no obligation to negotiate separation, unless a clear majority votes in favour of that option.

The Supreme Court also said that if there was a clear majority on a clear question on separation, it would then be necessary to negotiate within the Canadian constitutional framework, which is currently silent on such a process.

Honourable senators, there are people willing to ignore or threatening to ignore parts of that opinion, thus putting Canadians in a position where they could lose their country in the heat of the action.

Above all, we must not forget that secession would affect not only our contemporaries, but also future generations, who might well wonder how something so important was done so flippantly. Honourable senators, I will certainly have to answer for this to my three children and six grandchildren.

Separation must not occur in a state of confusion and outside legal parameters. Bill C-20 follows up on the Supreme Court opinion and ensures that the Government of Canada cannot enter negotiations in the absence of a clear majority on a clear question, and that such negotiations would take place within a legal framework.

Honourable senators, the federation called Canada works. It is a federation that is evolving and the Government of Canada wants to work with all its partners to make sure it is evolving in the best possible way.

Our federation is made up of a strong national government and of strong provinces, as evidenced by our tax system. Some areas come under federal jurisdiction, while others fall under the provinces' authority. However, the various levels of government, including municipalities, must increasingly work together to better serve the public. Our federation is strong because it is based on a well-established solidarity and diversity, and also on a tradition of sharing based on the best possible practices. It is always possible to improve things, and we can continue to make our federation more effective by cooperating in areas where federal and provincial activities complement each other.

Therefore, when we coordinate our energies, we work hand in hand with our partners. The infrastructure program is a fine example of this. Thus, the federation is all the more effective and national unity stronger.

More recently, the Government of Canada took a number of steps to renew its association with the provinces. These include a framework to improve the social union for Canadians, the national child tax credit, the Team Canada trade missions and the manpower agreements.

Does Quebec benefit from this flexible partnership? Yes, and it enjoys an enviable degree of autonomy. The flexibility of Canadian federalism has also enabled Quebec to be distinct from the other provinces thanks to special arrangements in many areas. For example, the Civil Code in Quebec underwent a major reform a few years ago; Quebec has a separate law on income tax; in international relations, we are familiar with the agreements in the area of the Francophonie; Quebec administers the pension plan of many Quebecers, through its Caisse de dépôt et placement and several other funds in many areas, and there is the whole area of social policy, which includes post-secondary education and immigration.

• (1530)

Instead of considering Bill C-20 introduced by the Government of Canada an attempt to fix the current federal partnership in time, I would encourage you, honourable senators, to see it for what it is: an instrument to protect the rights and interests of Canadians.

A provincial legislative assembly can formulate a question and put it within its area of jurisdiction. However, the public to whom a question on separation is put is entitled to know in advance what the Government of Canada thinks about the clarity of the question, given that it will be one of the parties involved in negotiations and that it represents all of the citizens of Canada.

The question and the majority therefore need to be evaluated to ensure that there is a manifest desire to separate before the Government of Canada undertakes discussions that could lead to the breakup of our country. Bill C-20 applies the Supreme Court's opinion. Today, in fact, Minister Facal, who spoke before the Ottawa press club recognized that Bill C-20 does so.

Instead of having a small majority dictate the breakup of the nation, Bill C-20 provides for the evaluation of the quality of a majority. The two go together, in that the majority must be clear and so must the question. The two cannot be separated. It would be absurd to base a decision of such magnitude on a voting process where it was necessary to recount the votes because the results were too close, as was the case during the last referendum, or to examine ballots that had been invalidated by the thousands in certain ridings.

Moreover, it would be irresponsible to think about building a new country on the basis of a small majority that would not withstand the uncertainties of long and arduous negotiations on separation.

Bill C-20 does not set a threshold, since the majority will have to be evaluated under the circumstances surrounding that particular referendum, as recommended by the Supreme Court. It will assess the nature of the question.

Should voters give their clear support to a clear question on secession, Bill C-20 sets out the legal framework for negotiations. It ensures that all negotiations will comply with the rule of law and our constitutional principles.

Contrary to the comments made by Mr. Facal today, the government says that it does not recognize any legitimacy as to the scope of the bill. In other words, it does not recognize the legislation of the Government of Canada, the country in which that government exists. From a democratic point of view, Quebecers are protected by this bill.

Let us never forget that secession is a serious measure which cannot be undone easily. Negotiations to that effect would seek to end all the Government of Canada's responsibilities toward a segment of the Canadian population to which I belong.

Therefore, the basic rules must be very clear. Some have said that Bill C-20 is a step toward secession. For the past 30 years we have been living with the uncertainty of a question and we have had two referendums. I think Bill C-20 aims at keeping us on the road to democracy. It is sometimes a bumpy road and there are no shortcuts, but it always leads us towards our goal, which is a strong country.

It is strange that while Premier Bouchard recognizes that the Supreme Court opinion establishes the rule of law, today the government refuses to recognize the bill that is the result of that opinion.

So it seems to me that when Mr. Facal speaks to us of good faith, he should go back to the statements made at the time of the Supreme Court reference and ask himself this question: Which is the responsible government? The one that sets the rules of the game or the one that continues to play with those rules?

Honourable senators, for the past 30 years, I have seen Quebec evolve in Canada, within a federation. It has developed industries in leading edge technologies such as aeronautics, pharmacology, telecommunications, multimedia, and biotechnology in partnership with and under the leadership of the Government of Canada. How can we now ignore the fact that people want to abandon this country by not passing a bill which will oblige us to respect the wishes of Quebecers? The bill sets out clear indicators. That is why, honourable senators, I consider it my duty to support this bill and I encourage my colleagues to do likewise.

**Hon. Lowell Murray:** Honourable senators, does this bill mean that in another referendum Quebecers will have to choose between the constitutional status quo and separation?

**Senator Hervieux-Payette:** The bill deals only with the clarity of the question and the answer. The question will be up to the National Assembly alone. I remind honourable senators that in the past two referendums, the official opposition in Quebec has always refused to endorse the question. I return the question to the honourable senator. We cannot now decide on one option or another as long as the question has not been formulated. The bill, as I have already said, is like an insurance policy on the clarity of the question so that we will have a clear answer with respect to our collective future.



**Hon. Pierre Claude Nolin:** Honourable senators, I will ask my question as a legal expert. Can the honourable senator read clause 1.(1) of the bill? The honourable senator told us in her speech that the National Assembly has full authority to ask whatever question it wants. However, Bill C-20 stipulates that, for there to be negotiations after this referendum, the question must be specifically about the secession of the province. Clause 1.(1) reads as follows:

...the House of Commons shall...consider the question and...set out its determination...

Is this not an appeal against a decision by a Parliament at a provincial level of the federation? This decision is being appealed and heard by another level of the same federation?

**Senator Hervieux-Payette:** When referring to the question the National Assembly may ask, I believe that it has shown on two occasions that it was capable of asking a question that was certainly checked several times through polls. As long as there was no possibility of a majority, they kept modifying the wording. I have seen no questions that asked clearly for a yes or no on the subject of Quebec's separation. Given the last two referendums, which gave rise to uncertainty, which have cost two generations of Quebecers dearly, Bill C-20 now puts an end to the ambiguity of the questions asked.

The Quebec referendum legislation, honourable senators, can be used in numerous other cases, not just the future of Quebec. It can be used for mergers of municipalities, or the acceptance of other important measures.

Recently, Albertans asked their government to hold a referendum on the health system. This legislation covers questions such as these, in Quebec. The government or the House of Commons will have to address the matter, when it affects all Canadians, including Quebecers.

**Senator Nolin:** Honourable senators, can the House of Commons sit in appeal of a decision taken by the Quebec National Assembly? The answer is yes. The honourable senator must answer yes, under this bill. Under what principle of Canada federalism can this be done?

• (1540)

**Senator Hervieux-Payette:** It is because when that discussion takes place, Quebec will still be bound by the Canadian constitution, which does not include any secession process as such. It is certainly more prudent for the Government of Canada to know what the discussions will be. I was not there in 1867. Other honourable senators may have a better knowledge of history than I do, but all the provinces thoroughly discussed why they joined the federation. They did not think about including provisions on secession. If Quebec wanted to patriate the powers in another area of federal jurisdiction, we could ask a question. That would not lead to the secession of Quebec. When the House of Commons has to decide on the question, it will be to decide whether Canada accepts to go to the negotiation table to end Quebec's participation in Canada.

**Senator Nolin:** Honourable senators, I have another question.

**The Hon. the Speaker *pro tempore*:** Senator Nolin, I am sorry to interrupt, but the allotted time period has expired. Honourable senators, is leave granted to continue?

**Hon. Senators:** Agreed.

**Senator Nolin:** Let us go back to November 1995, when, together, we just barely saved Canada. Let us suppose that we have Bill C-20. We have a question that was chosen by the National Assembly — if you remember, in early September 1995, the federalist forces were ahead by about 20 points in the polls. By the end of the debate on the question, there is a 25 point lead over the yes side. The House of Commons, under the power provided to it by Bill C-20, makes a decision and tells federalists in Quebec that the question is not clear. Therefore the House of Commons considers that the question does not exist. What must the federalists in Quebec do then?

**Senator Hervieux-Payette:** Honourable senators, I clearly recall the 1995 campaign, but I do not recall the results of the polls so well. I know that it is always distressing. I canvassed, as did a number of my colleagues. If I recall rightly, the official opposition had criticized the question. It mentioned partnership. There was talk of the agreement reached on the question with a member of the ADQ. No one knew what agreement they were talking about. When we asked people in Quebec, they thought there was an agreement with the federal government. At that point, the members of the official opposition in the National Assembly criticized the question. We knew they had managed to rope the ADQ opposition member into a rather convoluted agreement. It is ridiculous to mobilize federalist forces each time for an obscure question that makes a mockery in the end of the future of Quebecers. When the government has the courage of its convictions and puts the real question, it will be easy for us to decide.

**Senator Nolin:** I agree with the honourable senator. The question was very difficult to understand, even if we managed to grasp the implications. We fought to ensure that this question did not win the favour of Quebecers. Let us transpose Bill C-20 to 1995. If the House of Commons had declared in 1995 that the question was not clear, what would the federalists in Quebec have done?

**Senator Hervieux-Payette:** The question is hypothetical. It is impossible to answer it except to ask why we are going to play a very dangerous game that destabilizes the entire country, that will cost the nation in energy and effort and that will leave marks. The honourable senator acknowledged the obscurity of the question. In general, we negotiate when the other party is of good faith and puts the right question. It will be up to the House of Commons to decide on a question. The real question, in the past 30 years, would never have had significant support from Quebecers.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, Senator Hervieux-Payette is a good legal expert. My remarks concern the opinion of the Supreme Court. I imagine you have all read it carefully. My question concerns the problem at page 2 of the bill.

Whereas, in light of the finding by the Supreme Court of Canada that it would be for elected representatives to determine what constitutes a clear question and what constitutes a clear majority —

In all the paragraphs dealing with this question, the expression used by the Supreme Court is "political actors." It is only in paragraph 101 that the Supreme Court uses the expression "elected representatives." In this paragraph, the court addresses the problem of the negotiations. The negotiations are the responsibility of elected representatives. Can the honourable senator explain this?

**Senator Hervieux-Payette:** The entire debate with respect to our honourable institution hinges on whether we are political actors. The government has decided that the representatives of all electoral ridings in the country are the political actors. Once the House of Commons, through its elected representatives, has decided, I see no harm to our institution. If there were negotiations or major changes, our institution has only a suspending power, not a final veto. Our institution will certainly give its opinion on the question. In order to avoid any confusion that might arise from an unclear question, elected representatives will have to make known to their constituents their assessment of the question. Legally speaking, the Senate must examine the bills that could change the rules of the game following a referendum.

• 155

I know that we are not all in agreement on the definition of "political actor," nor do I like the word "actor." We are not elected representatives; we are appointed for a fairly lengthy period. I believe that the decision will have to be taken quickly and I do not see how our rights as senators and representatives of the same people represented by members of the House of Commons will suffer if only elected representatives decide on the clarity of the question.

**Senator Kinsella:** It is our duty to protect the future of this institution. There are two Houses in this Parliament. It is a bicameral system. If we can find a solution so that both Houses are equal in the determination of the question without departing from the process envisaged in the bill, if we can avoid collateral damage with a certain creativity, would the senator be prepared to support a proposal to that effect?

**Senator Hervieux-Payette:** I am certainly prepared to listen to suggestions, but I have not been convinced so far by the arguments expressed earlier on the need, in order to go ahead with Bill C-20, to establish a *sine qua non* that the Senate be given a say on the clarity of the referendum question.

Following the decision as to whether the question is clear or not and to whether the process is recognized or not, should changes be made to rights, this house will retain its legislative powers. The issue remains the nature and the clarity of the question. For the institution that will have to consider the question, it will be more a matter of subjectivity than quality. The same goes for the majority issue and I do not believe elected representatives should be the ones to decide that. However, I am open to any suggestion from honourable senators.

**Hon. Gérald-A. Beaudoin:** I should like to ask a question of our bicameral system. The Fathers of Confederation chose for Canada a bicameral system at the federal level. Does the honourable senator not agree that in a bicameral parliamentary system, both chambers are equal in principle? There might be few exceptions, but from a purely legislative point of view, both chambers are equal and no bill can become law unless they both agree to it. This is also true of Bill C-20. So why are senators being asked to vote for a bill that gives the House of Commons power it does not give the Senate, and this at a very important time in our history? Why vote in favour of our exclusion from the provisions of a bill? I could understand that if it were a constitutional matter, then we would certainly have suspensive powers. However, this is not a constitutional matter, it is legislative matter. I believe it is not appropriate to ask, through a bill the fate of which we are to decide today, that we be excluded. People might say that both chambers may have different power, but when one chooses to legislate, one must play by the rules of the legislative system. In our legislative system, both chambers are equal.

**Senator Hervieux-Payette:** I am totally in agreement, this is a bicameral system and the two Houses are equal as far as bills are concerned. In this case, however, it is a matter of recognizing the clarity of a question by resolution. In the past, the House of Commons passed resolutions without their having been passed here in the Senate. I am thinking, for example, of armed force participation in certain peacekeeping missions. These were resolutions and not legislation. Bill C-20 is being examined in both Houses and will certainly go through the entire process in both Houses. When it comes to the question and its clarity, it involves implementation of the bill. For a number of bills, it can be done only in the House of Commons, this is not precedent.

**Senator Beaudoin:** Honourable senators, it is true that Bill C-20 says that, if the House of Commons reaches the conclusion that the question is not clear, it must order the government not to negotiate. I am not debating the clear question and the clear majority, that is another matter. The Senate mentioned, however, as having been consulted, whereas the choice has been made from the start to use legislation in order to negotiate. The government is perfectly entitled to go the legislative route, and I am not questioning that. Once it has chosen to negotiate using a law, it is clearly obliged to respect the principles of the bicameralism to which I have referred, which provide that, for an ordinary law, or for an extremely important one such as Bill C-20, the agreement of the Senate must be obtained. So much so, that if we say no to the bill, it will not be able to be passed. Both Houses are therefore equal. Why then, a piece of legislation, is a power assigned to one of the houses and not the other? We are told it was because of the time factor. We can reach a decision in 30 days. There are 105 of us here. There are three times as many in the other place. We can reach a decision just as quickly. It seems to me that, if they choose to take the legislative route, this is very important, but there is no flexibility. At this point, I wonder if it is not contrary to the very principles of our parliamentary system, to give the House of Commons considerable power that is not given to the Senate, whereas we are legislative equals.



**Senator Hervieux-Payette:** I acknowledge that I subscribe to much of the honourable senator's rationale, except that I would point out that, if the House of Commons did not agree on the clarity of the question or of the result, a vote of non-confidence would follow and the government would be defeated, something that certainly could not happen in this house. To move from that to thinking that we are on equal footing with respect to all questions in legal terms, I think there are powers that belong to the House of Commons that are not found here. I think that no government has ever been defeated in the Senate. We must consider the bill in its context.

• (1600)

This bill will enable the Government of Canada to represent all Canadians and to make sure that all the representatives of Canadian electoral districts support and grant or refuse the power to negotiate. This unanimous position would certainly not come from the separatist bloc.

On two occasions and in good faith, we entered into referendum processes with questions that put the entire future of Canada at issue. At the national level, these referendums left us unable to re-establish the facts.

We have a bicameral system, it is true, and we have essentially the same powers, except when it comes to bringing a government down on a non-confidence vote. This question will certainly lead to this type of vote, and only the House of Commons has this power.

**Senator Beaudoin:** Honourable senators, it is true that the vote of confidence occurs only in the House of Commons. The suspensive veto of the Senate applies only to a constitutional amendment.

My point is that this is not a constitutional amendment or a confidence vote. We are dealing with passage of a bill which, like any other bill, requires the consent of both Houses.

They suggest that we adopt Bill C-20, because they need the Senate. If we say no, there will be no Bill C-20. We are therefore being asked to vote on Bill C-20 and, at the same time, on our own exclusion. This goes against the principles of a bicameral Parliament.

[English]

**Hon. Anne C. Cools:** Honourable senators, I commend Senator Hervieux-Payette for her patience. Would the honourable senator take a question from me?

**Senator Hervieux-Payette:** Yes.

**Senator Cools:** The senator has premised a lot of what she is saying on the term "political actors" — a bizarre, strangely imprecise term to fall from the mouths of the courts. The honourable senator gave me some comfort by saying that she did not like the term.

In Canada, in our system, the position of the Prime Minister is not an elected position; it is an appointed position. The Prime Minister of Canada has a commission of appointment that sits on his wall, just as every member of the Senate does.

There have been several moments in the constitutional experience of Canada when premiers and prime ministers have held their offices without even holding a seat in the legislative assemblies or in the House of Commons. For example, Mr. Bouchard himself was premier of Quebec for a period of time without holding a seat in the National Assembly of Quebec. Prime Minister John Turner was Prime Minister of Canada without holding a seat in the House of Commons.

My question to the honourable senator is: Would the term "political actors" include a Premier Bouchard, if he were premier without a seat in the National Assembly, or would it include a John Turner, who was a prime minister without a seat in the House of Commons, or better still a prime minister of Canada who was a prime minister from the Senate of Canada?

**Senator Forrestall:** Some of them are stars.

**Senator Cools:** Yes, some are falling stars.

**Senator Hervieux-Payette:** Honourable senators, I would have appreciated notice from the honourable senator in order to do the proper research to determine whether that is so according to our Constitution, especially since the whole question of political actors is at the core of our dissenting opinion as to whether we should be part of the process or not. Should we go back to the Supreme Court of Canada and ask them to define "political actor" for us? I do not like to be described as one, I am someone representing a province and trying to do my best to serve the interests of my province, but I am not an actor. If I had chosen to be one, I would not be here.

I do not have the answer the honourable senator is trying to get from me. If I can get a legal opinion from someone more qualified than I in defining the necessary quality to qualify as a political actor, I would be pleased to give it to the honourable senator.

**Senator Cools:** I thank the honourable senator. I am quite sure the court also meant political actresses, but we will not bother with that particular issue.

My question is premised on the fact that so much of Bill C-20 seems to be based on the fact that senators are appointed and not elected, and so much of the argument that we have heard here in support of Bill C-20 keeps using the term elected representatives. I was trying to show that, while the term used is "political actors," there are many political actors in Canada who are not elected. In this country, we have had at least two prime ministers from the Senate, and it is quite foreseeable that in the future we could have another prime minister from the Senate.

**Senator Kinsella:** Yes, Boudreau.

**Senator Cools:** As the honourable senator is attempting to answer the question, I would ask her to remember that the answer is not a legal one. This is a political issue — which is the entire problem: These are political questions, not legal questions. It does not matter how elaborate the legal dress is that you put on them, they remain political questions.

I now move to my second question. The honourable senator said in her speech — and I may not have got the exact words — something to the effect that the Supreme Court confirmed the right of Quebec or Quebecers to secede. I wonder if the honourable senator could tell me where this right has come from. Can the honourable senator, or anyone in the government, point me to the set of statutory laws, the set of constitutional laws, that ever conveyed the right of any province of Canada to secede?

Perhaps I did not make myself clear enough. The honourable senator said the court confirmed it. She did not say they created it, but that they confirmed that right.

**Senator Hervieux-Payette:** Honourable senators, I do not have the whole text of the decision before me; as such, it would be difficult for me to reply, because it is a long judgment. When I referred to the Supreme Court judgment, I was more or less referring to the overall framework addressing the question of a future referendum, and, of course, I think it is pretty clear. There is no specific article or even any constitutional convention in Canada that one can separate. I think we go far beyond that. I think we refer much more to the democratic process in a free society, but as to whether it is confirmed by a law or by our Constitution, I do not think we can have any reference to that.

What I wish we would have, of course, is a specific clause like they have in France, where they forbid separation. We do not have such a clause.

**Senator Lynch-Staunton:** Put it in!

**Senator Hervieux-Payette:** We will play by the rule of democracy. If the people of Quebec have the will, and if they are asked the right question and there is a qualified majority, I am sure the rest of Canada will agree to the separation, but it has to be done within the framework of the Constitution of Canada, with the approval of the rest of the country.

[Translation]

• (1610)

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, following the statement made by Senator Hervieux-Payette, who does not feel she is a political actor and who represents a region, as I do and as Senator Fraser and others do, I have a supplementary question.

[English]

My question is this: The Leader of the Government in Quebec and the Leader of the Opposition in Quebec, on behalf of their parties, have spoken out against this bill. The majority of the elected members from Quebec in the House of Commons have

voted against the bill. Who are we here, appointed, to preter that because we represent the regions, we can substitute ourselves for the overwhelming decision of the elected representatives on this bill, which is almost unanimous negative?

**Senator Hervieux-Payette:** Honourable senators, I come from Quebec, as does Senator Lynch-Staunton. For the last 30 years, I have lived the agony and the ambiguity of trying to be in favour of Canada and in favour of Quebec, and trying to be faithful to Quebec while being proud to be Canadian. For me, this is a very easy task. My family arrived in this country in 1670. I consider myself to have Canadian roots. We have, in fact, suffered for the last three decades the denunciations of the separatists that those who do not support the separation issue are not democratic.

Honourable senators, as I stand here today, I am a democratic person. My *raison d'être* in politics has been to support the fact that, in Quebec, being in Canada is a good deal. I am proud that my ancestors helped in creating, founding and discovering this country, but that is not the current trend in Quebec. It is tough to be a federalist in Quebec. My honourable friend knows that as well as I. It is not easy to face, on a day-to-day basis, a separatist government that has adopted another option. That is their choice. That is why I am here. If I had been in Quebec at this moment, I probably would have said that I support Bill C-20, but I must admit that it is not easy to stand for Canada when one is in Quebec.

**Senator Lynch-Staunton:** Honourable senators, I have difficulty in standing for Canada when I am in Quebec, nor do most Quebecers. I have more difficulty in standing as a Tory, but I am proud of it.

My question was, how far can we go in neglecting the expressed sentiment of the elected representatives of the National Assembly and that of the majority of the elected members from Quebec in the House of Commons on Bill C-20? The government on this side is ignoring the expressed will of the elected representatives completely, and I find that rather arrogant.

**Hon. Jack Austin:** That is our job.

**Senator Lynch-Staunton:** That is our job, says Senator Austin. Our job is to ignore the wishes of the elected representatives?

**Senator Austin:** No, it is to hear the wishes of Canadians.

**Senator Lynch-Staunton:** I oppose the bill, and I think it is in the interests of Canadians to oppose the bill. Perhaps when we get to the committee, whether a special committee or not, we will invite representatives from every province to come and give their views on how the House of Commons is being asked to interfere in a decision taken by a legislative assembly.

**Senator Austin:** And which would have no impact on Canada?



**Senator Lynch-Staunton:** Parliament makes many decisions without consultation that have a tremendous impact on the provinces.

**Senator Hervieux-Payette:** On the point about a majority of elected members from Quebec, we must remind ourselves that the majority the honourable senator is talking about are separatist members of the Bloc Québécois. These people represent a separatist option at the federal level in a democratic society, and they are very happy to be part of the Canadian family when they are travelling with us abroad. We must recognize that the majority on the government side who come from Quebec support the government. We must recognize the facts.

**Senator Lynch-Staunton:** That is all we have to know.

**Senator Hervieux-Payette:** The honourable senator says that we are neglecting the opinion of the Liberal opposition in Quebec. I must remind him, although this might hurt some feelings, that when we passed the Constitution in 1982, some Liberals in the National Assembly did not support it. I did support it, along with over 70 Liberal members of Parliament at the time. I want to remind my honourable friend that my colleagues and I in the Liberal Party support Bill C-20 because we believe in Canada.

[Translation]

**Hon. Michel Cogger:** Honourable senators, I have a question for the Honourable Senator Hervieux-Payette. We must conclude that, in the unwritten preamble of that act, there is the premise that Canada is divisible. That premise is not in the text, but if we start from the premise that Canada is indivisible, then there is no need for Bill C-20. Conversely, as soon as we consider Bill C-20, we must conclude that, under certain conditions, Canada would be divisible. Canada's ambassador to Paris, Mr. Roy, recently said how the French found Canada to be a very democratic state, because it was the only established country to declare itself divisible, under certain conditions.

Honourable senators, where can we find the foundation, the text, the convention, the legal basis for Bill C-20? Where can we begin to build on such a bill? Where does the Canadian government find the power to propose this legislation to the two Houses?

**Senator Hervieux-Payette:** Honourable senators, Senator Cogger says there have been two referendums. It must be remembered that in Canada we have constitutional conventions, tradition, and legislation. I agreed that there were no provisions in the Canadian Constitution recognizing the divisibility of the country, but that the Government of Canada took part in two referendums in the past. We all took part in this very painful exercise. The Supreme Court opinion mentions this possibility of divisibility, following these two referendums.

If the Canadian government had decided in the 1980s that it would not under any circumstances recognize the results of the referendum within the constitutional framework of the time, things would perhaps be different. I cannot rewrite history. We

took part in two referendums, and put everything we could into protecting the interests of Quebec within Canada and I hope that I will not repeat the exercise a third time. This bill is an insurance policy. It is a bill that defines the frame of reference. I agree with you that there are few countries in the world that would allow civilized people to take a democratic decision to destroy a country. It has taken several hundreds of years to build it in a civilized manner and by constitutional agreement. We must not deceive ourselves. If ever there were a clear question and a clear result, I do not believe that the negotiations would be so easy or that we would emerge any the better. It is an exercise in which all Canadians would lose.

On motion of Senator Atkins, debate adjourned.

• (1620)

## MODERNIZATION OF BENEFITS AND OBLIGATIONS BILL

SECOND READING—DEBATE ADJOURNED

**Hon. Lucie Pépin** moved second reading of Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations.

She said: Honourable senators, I rise today in support of Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations. I support this bill because it is in line with the actions I have been taking for a number of years in favour of equality, tolerance and respect of others.

As honourable senators are no doubt aware, Bill C-23 is intended to recognize heterosexual and homosexual common-law unions as having the same status in the eyes of the federal State. Concretely, this translates into identical treatment of common-law partners in Canada as far as the benefits and obligations arising out of their union are concerned, whether this is a same-sex or opposite-sex couple. The consequence of Bill C-23 will therefore be, first of all, to extend to same-sex common-law partners the advantages and obligations that currently apply only to opposite-sex common-law partners and, second, to extend to opposite-sex or same-sex common-law partners certain benefits and certain obligations to which they do not have access at the present time.

Strictly speaking, that is the entire scope of this omnibus bill.

In practice, however, Bill C-23 involves amendment of a number of federal laws, affecting some twenty or so departments or agencies, in seven different areas, pensions, income tax and criminal law in particular.

I will go into further detail, if I may, on certain of the more significant changes. First of all, Bill C-23 uses the term "spouse" to designate married partners exclusively, and the new term "common-law partner" to designate persons of the same or opposite sex who have lived together in a common-law union for at least one year.

I note, honourable senators, that the one-year period of cohabitation required to entitle couples living in a common-law situation to benefits and obligations is not new and that Bill C-23 in no way changes it.

There are some who see Bill C-23 as an attack on marriage. This situation led to the provision of a rule of interpretation in the bill providing that, and I quote:

... the amendments made by this Act do not affect the meaning of the word "marriage", that is, the lawful union of one man and one woman to the exclusion of all others.

It is my opinion, honourable senators, that this motion was unnecessary, first because the bill has nothing to do with marriage and then because the meaning of marriage is already clear in law. Nevertheless, the Minister of Justice said there was a need to reassure certain Canadians that Bill C-23 does not in any way alter the meaning of marriage. Bill C-23 is restricted to recognizing other forms of stable relationships based on a commitment.

Why the law then? It is Parliament's answer to changes in Canadian society and to a series of decisions by courts at various levels over the past few years in Canada, which all had the effect of questioning the fact that social programs did not include partners of the same sex, in other words, were limited to a heterosexual reference.

Whether some people like it or not, Canada must no longer be a society where being lesbian or gay is a disgrace. This has been the case, however, in the past. It was in 1992 that the World Health Organization stopped defining homosexuality as a mental illness.

To illustrate the distance covered since then, allow me, honourable senators, to share with you the results of an Angus Reid poll released in October 1998, which showed that Canadians now accept same-sex couples. The poll revealed that a majority of Canadians, more specifically, 67 per cent, believed that same-sex couples living as a married couple should enjoy the same tax or employment-related benefits as heterosexual couples. In April 1995, this figure was 49 per cent. Of course the support of Canadians for this proposal was not uniform: women were more in favour than men of recognizing same-sex couples, and the younger and more educated were more in favour of according this recognition. In short, a majority of Canadians feel that same-sex partners should enjoy the same benefits and obligations as accorded by the federal government to partners of the opposite sex, married or not.

I would even bet that the adoption of Bill C-23 will help reduce the percentage of Canadians who are still opposed to the recognition of same-sex couples, since the state is showing tolerance and respect and is taking measures to achieve equality. By passing Bill C-23, Parliament sends the message that homosexuals are no longer second-class citizens, but full-fledged members of the Canadian political community.

Bill C-23 is also in response to a number of court rulings. With your permission, honourable senators, I will mention the decisions that have paved the way toward the recognition of same-sex couples, and I will draw some lessons from them.

The Quebec government was the first one, in 1977, to prohibit any discrimination based on sexual orientation. Two years later the Canadian Human Rights Commission recommended that the Canadian Human Rights Act be amended to include sexual orientation as a prohibited ground of discrimination. I remind you that the Canadian Charter of Rights and Freedoms was adopted in 1982, but its section 15(1) did not include sexual orientation as a prohibited ground of discrimination. In 1985, the idea of considering sexual orientation as a prohibited ground of discrimination received the support of the Parliamentary Subcommittee on Equality Rights, through its famous report entitled "Equality for All." In 1992, in the *Haig* case, the Ontario Court of Appeal ruled that the Canadian Human Rights Act must be interpreted as prohibiting discrimination based on sexual orientation. Four years later, in 1996, the Canadian Human Rights Act was finally amended accordingly and, the following year, the Canadian Human Rights Tribunal issues its first ruling in favour of granting benefits to the spouses of homosexual public servants.

The 1990s saw many outcomes favourable to the recognition of same-sex couples. In 1992, the armed forces lifted the restrictions on enrolment and promotion based on sexual orientation. In 1995, the Supreme Court of Canada handed down its first decision under section 15 of the Charter with respect to sexual orientation and the awarding of benefits to same-sex spouses — the *Egan* decision. In a unanimous decision, the court ruled that sexual orientation constituted a prohibited ground of discrimination under section 15 of the Charter, just like sex or age. Several decisions favourable to same-sex couples at the federal and provincial levels ensued. With respect to the granting of benefits to same-sex spouses, five of the nine judges ruled that the definition of "spouse" in the federal Old Age Security Act contravened section 15 of the Charter, but that this violation was justified under section 1 of the Charter.

In 1998, two decisions overturned this preliminary interpretation of the Charter. In *Vriend v. Alberta*, the Supreme Court held that the deliberate omission of sexual orientation in Alberta's Individual Rights Protection Act contravened section 15 of the Charter and that this departure was not justified under section 1. The Court of Appeal of Ontario handed down a similar ruling. In *Rosenberg v. Canada*, it ruled that the fact of excluding same-sex spouses from the federal Income Tax Act was not justified under section 1 of the Charter. These two rulings affirm that section 1 of the Charter cannot justify discrimination on the grounds of sexual orientation.

In 1999, in *M. v. H.*, the Supreme Court opened the door to claiming support payments following the breakdown of a relationship between persons of the same sex.



• (1630)

Indeed, the court found that Part III of the Family Law Act of Ontario contravened section 15 and was not justified under section 1 because it only referred to opposite-sex couples. This decision states that recognition does not mean benefits only, but also obligations, which a number of speakers in this debate tend to forget.

Finally, I will touch on the enactment of Bill C-78 regarding survivor benefits. This is the first federal act explicitly granting benefits to same-sex couples. For the first time ever, Parliament used its legislative authority to grant full citizenship status to some homosexuals by making them eligible for social benefits.

Honourable senators, it is in this context that Bill C-23 must be seen: It is now clear that the Charter offers legal guarantees to homosexuals and that the recognition of same-sex couples does not imply only benefits, but also obligations. This principle must now be put into practice. This is precisely the point of Bill C-23, to bring federal legislation in line with the Charter of Rights and Freedoms.

In the other place and at the Standing Committee on Justice and Human rights many spoke against passage of Bill C-23. Many objected on moral grounds, but several raised legal and societal issues. Allow me to review some of the arguments put forward against the recognition of same-sex couples in Canada.

One argument that was often heard against Bill C-23 was that it would harm the institution of marriage and the family. Both institutions are supposed to be the pillars of Canadian society and ensure its stability. To attack them could only lead to social unrest.

Not being a visionary, I will not voice any opinion on the apocalyptic interpretations of what will happen the day after Bill C-23 is passed. In reality, I simply do not believe that this bill could lead to such chaos, simply because there is no basis in its contents to justify that. The bill in question does not in any way modify the definition of marriage, that is, the lawful union of one man and one woman to the exclusion of all others. Bill C-23 merely recognizes other forms of stable relationships based on commitment.

In this connection, honourable senators, I would like to quote to you from the testimony given by Prof. Martha Bailey, a family law specialist from Queen's University on March 2, when she gave her opinion on Bill C-23 before the Standing Committee on Justice and Human Rights. At the time, she stated as follows:

*English]*

...all Bill C-23 does is extend certain benefits and obligations traditionally associated with marriage to same-sex couples. It does not affect marriage.

*Translation]*

Nothing could be clearer than that.

Another argument that has been put forward in connection with Bill C-23 is that it constitutes an attack on the family. By extending to same-sex couples the advantages and obligations traditionally recognized for married couples, Bill C-23 supposedly would be sounding a death knell on marriage and the family. What advantage would there be for couples to marry and start a family if they could enjoy the same status and advantages without doing so? This is, if I may say so, an extremely narrow-minded view of marriage. Let us be serious about this. Who, except someone with very utilitarian views, decides to marry in order to have access to these advantages? Is there not something more profound to marriage and the desire to start a family?

Bill C-23 is resolutely realistic, since it acknowledges that Canadian society is no longer made up of only heterosexual unions — indeed, numerous studies show that there have been same-sex couples in Canada for a long time. By passing Bill C-23, Parliament will merely be recognizing the existence in Canada of unions other than those of heterosexual couples. Parliament will no longer bury its head in the sand, and will be putting an end to a long-standing practice of social exclusion.

On this, allow me, honourable senators, to quote a passage from *Rosenberg*:

There is less to fear in recognizing conjugal diversity than in tolerating exclusionary prejudice.

By passing Bill C-23, Parliament will resolutely prove its modernity.

Let us move now from marriage and the family to the field of law. Justice is a pillar of a state with rule of law where the government is governed by law in order to protect the public from the government itself. Democracy is not domination of the minority by the majority, nor the reverse. It is, rather, a search for compromise and negotiated solution based on a desirable societal balance. There can be no democracy without political pluralism, nor political pluralism without rule of law and no rule of law without legal interpretation. This is the fundamental role of the courts: the formulation of a consensus leading to the attainment of a desirable societal balance. In other words, honourable senators, those who balk at having the Supreme Court interpret the Charter are purely and simply advocating a form of rule in which the government arbitrarily sets the laws.

Some have held that, with Bill C-23, the government would be giving in to judicial activism; the courts would replace Parliament, with the supremacy of the court replacing the supremacy of Parliament. Were this the case, a bill recognizing same-sex couples would have been submitted to us long before 2000, in fact with the initial decisions on the matter. Far from giving in to judicial activism, the federal government, on the contrary, took the time to examine the situation and to propose legislation intended to put an end to a flagrant injustice and in so doing, it was responsible. With Bill C-23, the government is providing a framework that is responsible, equitable and legally solid, providing room for the latest court decisions on the eligibility of same sex couples for the benefits and obligations of opposite-sex couples.

In fact, far from giving in to judicial activism, the federal government might be accused of lagging behind a number of provinces that have already amended their statutes so they no longer discriminate against same-sex couples. Moreover, in the absence of legislation, the courts will continue to hear cases individually, maintaining confusion and constant and costly litigation. It is precisely for these reasons that the government must assume the responsibility of proceeding with Bill C-23.

Honourable senators, while I am asking you to vote in favour of the bill to modernize the Statutes of Canada in relation to benefits and obligations, I am well aware of the limitations of the proposed measure and I know that Bill C-23 will not solve all the problems experienced by homosexuals in our society. Nevertheless, Bill C-23 can help alleviate some of these difficulties.

Bill C-23 cannot eliminate biases against homosexuals, and particularly the abuse to which they are subjected. The group EGALE, which is a national leader in the protection and promotion of the rights of homosexuals and which testified before the Standing Committee on Justice and Human Rights, noted with sadness that physical violence against homosexuals was on the rise again. This is not to mention the psychological abuse against homosexuals — the jokes and so on — which pushes some of them to commit suicide. Indeed, an article published in *Le Devoir* on March 17 stated that:

...the fear of being identified as a homosexual and then be ostracized for that reason is a major cause of depression and suicidal impulses among young people.

This is true at least in the case of young men, who were the target group in the study referred to in this article. Bill C-23 will not solve the tragic issue of suicide, but sending the message that any individual, whether homosexual or heterosexual, has a right to a full life, might help reduce the number of suicides.

Notwithstanding these criticisms, honourable senators, I urge you to vote in favour of the bill to modernize the Statutes of Canada in relation to benefits and obligations. As its title indicates, Bill C-23 seeks to modernize, that is to update the act and to bring it more in line with the reality. The reality is that, today, equality is a fundamental value of the Canadian political community, as evidenced by our charter. The reality is also that, in the Canadian society, there are opposite sex couples and same sex couples. The law must reflect today's reality.

• (1640)

With Bill C-23, Canada follows the example of several countries which, in recent years, have recognized same-sex couples in one way or another. Just like the very advanced nordic countries have already done, Canada is now ready to recognize the diversity of lifestyles within its population. Incidentally, these countries are also among the most advanced in terms of the political representation of women, another issue which you all know is very important to me.

In passing Bill C-23, Canada will honour its international commitments with regard to civil and political rights. The federal

government will also cease to be lagging behind several municipal governments and several large Canadian companies that have already given full recognition to those of their employees who are engaged in a same-sex relationship. Bill C-23 is a logical conclusion. It is the product of a constitutional state, a state that submits its decision to the wisdom of law.

Above all, Bill C-23 is a matter of simple justice. Today, a substantial minority, or 40.7 per cent, of married or common-law couples in Canada do not have children. However, even with no children and contrary to same-sex couples, several of which do have children, heterosexual couples have the advantage of having their union recognized by the state. It is clearly unfair for same-sex couples, at least in a constitutional state where equality is an exemplary value and where its opposite, discrimination, cannot be justified in a free and democratic society.

In closing, honourable senators, we must pass Bill C-23 because it shows an openness to the pluralism of Canadian society and it promotes tolerance to diversity, mutual respect, justice and equality. There is no doubt that these are the components of a modern political community.

**Hon. Fernand Robichaud:** I congratulate Senator Pépin on her speech, and I think this bill is certainly justified, but I did notice an omission. We know, and I am aware of some cases, that other people live together, like a brother and a sister, two brothers or two sisters. They sometimes live together for a long time, and are able to have a decent living because they live together. When one of them has to leave, the other finds himself or herself in a miserable condition. Should we not include these people in the definition of common-law partnership? They live just like a family does.

**Senator Pépin:** You are right when you say that when several people live together in a family, there is a relation of economic dependency. However, after examining the obligations and the scope of such a bill, the government has concluded that this situation should be dealt with in a separate bill.

Since these people do not live as couples, it would be better to keep both types of situations separate instead of joining them in a single bill, because they are different.

**Senator Robichaud:** You say it is completely different. I do not really see how because there is certainly a dependency relationship between these two people living together. If you tell me that the government intends to go in this direction later and I look at this, I hope it will do so fairly quickly because I think this situation should not continue. It is not fair to those in dependency relationships.

**Senator Pépin:** Honourable senators, one does not live with someone just to be dependent either. These are two completely different issues. I am in favour of your request and agree that we should consider the problem these people are facing. You do not live like a married couple because you are dependant on each other. I am prepared to pass on your requests to the government. At this stage, this addition would add confusion to the bill.



[English]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**

Honourable senators, I am curious about whether the public policy objective of this bill is to have the state facilitate people who are dependent on another. If that dependency is responded to by the fruit of the labour of the one who is at work, the state will not have carriage of the social needs of the dependent person. What exactly is the social policy objective of this bill? Is it meant to maintain the dependency relationship between a citizen and another citizen and therefore not have that citizen dependent upon the state through some other social program?

[Translation]

**Senator Pépin:** I do not think the bill's purpose is to recognize dependency relationships. The government recognizes that heterosexual people are capable of living together and I think that that is not necessarily a dependency relationship. However, it does not recognize same-sex couples who are fond of one another and wish to live together.

I think there is a slight difference. I could be wrong but when people in the same family live together, with one responsible for the other, the responsibility is often different. For instance, I am responsible for my mother; there is a relationship of affection, but I am still responsible for my mother.

However, if you are a couple, heterosexual or homosexual, I believe that the two relationships are similar and should be recognized. There is no dependency or financial relationship. If some honourable senators have better arguments, they could answer your question.

[English]

• (1650)

**Hon. Anne C. Cools:** Honourable senators, Senator Pépin just responded to a particular question on the issue of dependency. The chamber should be informed that Minister Anne McLellan appeared before the Standing Senate Committee on Legal and Constitutional Affairs on September 23, 1998, and said the opposite of what Senator Pépin has said.

Minister Anne McLellan appeared before the Legal and Constitutional Affairs Committee on Bill C-37, which was to amend the Judges Act. In response to a question from Senator Bryden, Minister McLellan put the following on the record. I think it should form part of the record here today. She said:

I will be very candid: This government's expressed approach to this is that we will deal with every case on a case-by-case basis. The court has said that it will take a similar approach. However, I would remind honourable senators — and I said this in response to Senator Bryden — that we are doing policy work that potentially speaks to a fundamental change to whom benefits might be extended within Canadian society, at least within the federal

jurisdiction, and that we do not want to restrict ourselves to a discussion simply of same sex or opposite sex, but to consider a more legitimate question in Canadian society which is one of true dependency. When that work is done, as I have already indicated, we may return to both you and the House of Commons with an omnibus piece of legislation which will deal with the extension of benefits and entitlements of one sort or another on the basis of dependency. That work is well on its way, and my colleagues and I will be talking about it in detail starting next week.

This is a very important question. At what point in time did the minister abandon and retreat from her stated intention of extending benefits to all relationships of economic dependency and move to the very questionable area of extending benefits based on sexuality? That is very unusual. It is a question with which the committee must deal.

I have two questions to ask of the Honourable Senator Pépin. First, what is a conjugal relationship as defined in this particular bill? Second, how will the existence of a conjugal relationship be determined?

**Hon. Serge Joyal:** Honourable senators, I wish to follow up on the question raised by Senator Cools about conjugal relationships. The Supreme Court judgment in the case referred to by Senator Pépin, and in particular Justice Cory, has defined clearly what is a conjugal relationship. It is not based on sex. Sex is one element. However, it is not an exclusive element of a conjugal relationship. In fact, the court has said that in many conjugal relationships there is no element of sexuality involved. That is because people can enter into marriage or common-law situations and have no children.

The morals of today allow people to have abortions, to resort to contraceptives and to decide on a common ground not to have children. It is the right of people in a couple to choose. Thus, the element of sexuality is not an exclusive element of any conjugal relationship on that basis. Justice Cory established that very clearly when he established the five elements of a conjugal relationship. As Senators Pépin and Cools have mentioned, we will have ample opportunity in committee to debate those issues.

There is a fundamental element in what Senator Pépin has said. Bill C-23 is based on the judgment and interpretation of section 15 of the Charter. Section 15 of the Charter in relation to common-law couples was not adopted on the basis of children versus parents, uncles versus nephews, and so on. The Supreme Court interpretation of section 15 is that people who live in a common-law situation are entitled to the same benefits, be they heterosexual or same-sex couples. That is essentially what the court has said. The court has not pronounced on the rights of parents or relatives on the basis of the interpretation of section 15. It has not established such a right. However, the court has established such a right for people living in a common-law situation.

A mother and nephew, for example, are not in a common-law situation. They might have dependency responsibilities one to the other. They might benefit from some fiscal recognition by the state, be it at the provincial or the federal level, for reasons related to social policy. In other words, governments may support people helping one another when they became older, handicapped, or when they need the support of a parent to address the needs of living. That is a totally different issue. It is not a legal issue confirmed by the Supreme Court's interpretation of section 15.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I rise on a point of order.

**Senator Cools:** Honourable senators, if Senator Joyal is asking a question, I should like to respond. I welcome what the honourable senator has said. I want to ensure that we will have an opportunity to debate his remarks.

Senator Pépin has just said that she is not answering questions. Thus, I welcome the comments of Senator Joyal. However, we need an opportunity to debate his points.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I do not know if Senator Pépin's 45 minutes have expired, but I should like to comment on the point of order.

Any senator, including Senator Pépin, is entitled not to answer a question, if that is their choice. They do this individually, although it seems arbitrary to answer one senator's question yet not answer another senator's question. I do not think it is inappropriate for Senator Pépin not to answer a question yet accept another senator's question. It is in order to make a comment or to ask a question. However, I think there is a time frame in which a question or a comment is to be put.

I submit that we are getting close to the time limit of a comment. Thus, on the matter of the point of order, I would put it that a senator can refuse to answer a question or answer a question on a senator-to-senator basis.

I also submit that we should do everything we can to encourage debate. However, I remind honourable senators in speaking to this point of order that I believe the rules anticipate brevity in putting a question or in making a comment.

On motion of Senator Robertson, debate adjourned.

[ Senator Joyal ]

## HERITAGE LIGHTHOUSES PROTECTION BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. J. Michael Forrestall** moved second reading Bill S-21, to protect heritage lighthouses.

He said: Honourable senators, this matter is, perhaps, a little less controversial. However, to some it is of equal interest. It is not nearly so commanding of one's time and mental capacity.

• (1700)

Honourable senators, it is my pleasure today to speak Bill S-21 and, in so doing, to express my sincerest appreciation to Mr. Joe Varner and the very capable assistants, Mr. Mark Audcent, Law Clerk of the Senate, for the work they have done in bringing together a non-controversial piece of legislation. I want particularly to express appreciation to Deborah Palumbo.

This is neither a partisan nor a money issue. I ask the senators familiar with Nova Scotia and our beautiful tourist trail to imagine the Lighthouse Trail without one lighthouse or outlying structures. Try to envision Peggy's Cove without its lighthouse. Every day that we sit idle, coastal communities throughout Canada, whether on the beautiful East Coast, along the scenic St. Lawrence, on Lake Winnipeg, or on the majestic shores of our Pacific northwest, face the loss of historic lighthouses — lighthouses which have been the source of salvation to sailors for hundreds of years. They have served as the centres for many coastal communities.

Beautiful pictures of lighthouses from around the world adorn many a prominent wall, because they are symbols of maritime conquest of the high seas and the oceans. In the past, they captured people's hearts, for they were the first sight of land to be seen upon returning home. Lighthouse portraits are among the most popular of wall hangings. There is no question of their place in the human heart, their simplistic beauty set against the rugged, dark seas. You need not be from the shores of the Atlantic, the Pacific, or the Arctic to be attracted to lighthouses.

The Lighthouse Preservation Society based in Nova Scotia, with representatives from across Canada, has done an extraordinarily good work in examining the plight of Canadian lighthouses and has attempted to save them from destruction. There are other groups on the West Coast that have also attempted to preserve this valuable part of Canadian maritime history. Our colleague, the co-sponsor of this bill, the Honourable Senator Pat Carney, has worked tirelessly with lightkeepers on the West Coast to protect stations and, indeed, to keep them themselves. I cannot tell you how many times I followed Senator Carney up spiralling staircases to dizzying heights to help her in her cause, a cause that brings credit to the Senate and to the isolated coastal communities that the government cares.

Today, there are over 500 lighthouses left in Canada. Only 10 of these have full heritage protection. Another 101 have partial protection and recognition as heritage sites. The rest exist in jeopardy on man's land at this time.



What does heritage protection status mean in real terms? I bring your attention back to Bill C-62, the Heritage Railway Stations Protection Act of 1988, upon which this bill is modelled. Why, if heritage sites are so special, was another act required to protect the heritage railway stations found in most Canadian communities? The answer, sadly, is that even with heritage designation these historic railway stations, some dating to Confederation, could be sold, transferred, altered, or destroyed with little recourse to the public. The Heritage Railway Stations Protection Act set up a process of public consultations prior to any action being taken with regard to the invaluable heritage sites and imposed stiff penalties in the event that precipitous action was taken that damaged historical railway stations. It has been determined that Canada's 19 heritage lighthouses and 101 partially recognized sites are in the same vulnerable position as Canada's historic train stations were prior to the passage of Bill C-62.

This is the very purpose of Bill S-21, an act to protect heritage lighthouses. Clause 3 of the bill states:

The purpose of this Act is to facilitate the designation and preservation of heritage lighthouses as part of Canada's culture and history and to protect them from being altered or disposed of without public consultation.

The bill defines "heritage lighthouse" as:

...any lighthouse, together with all buildings and other works belonging thereto and in connection therewith, designated by the Minister on the recommendation of the Board as a heritage lighthouse.

It defines "alter" as:

...to change in any manner, and includes to restore or renovate, but does not include routine maintenance and repairs.

"Board" means the Historic Sites and Monuments Board of Canada.

The minister responsible for this act shall be the Minister of Heritage.

Clause 4 states:

This Act applies to all lighthouses within the legislative authority of the Parliament of Canada, whether or not they are used as navigational aids.

Clause 5 states:

The Minister may, on the recommendation of the Board, designate, for the purposes of this Act, lighthouses as heritage lighthouses.

Most important, honourable senators, clause 6 (1) states:

No heritage lighthouse shall be removed, destroyed, altered, sold, assigned, transferred or otherwise disposed of, unless authorized by the Governor in Council.

For the purpose of safety, clause 6(2) reads:

Subsection (1) does not apply in respect of the alteration of a heritage lighthouse where the alteration is made in response to an emergency.

Clause 7 states:

Where it is intended to remove, destroy, alter, sell, assign, transfer or otherwise dispose of a heritage lighthouse, an application for authorization to do so shall be filed with the Minister, in accordance with the regulations, after public notice is given in the prescribed manner of the intention to file the application.

Thus, a regulatory mechanism is set in place to protect these invaluable heritage sites.

Clauses 8 through 10 spell out the terms for public hearings and empowers the minister and the Governor in Council to act in the public interest.

Honourable senators, this means that before a heritage lighthouse is pulled over or, in the unlikely event, sold to McDonald's or Burger King for advertising purposes, the public will be consulted. It also sets up a framework for the transfer of some of these heritage lighthouses to private hands or coastal community groups while maintaining the Government of Canada's ability and right to protect and preserve Canadian culture.

In the end, according to clause 7, the minister will make a recommendation to the Governor in Council based on the report of the board. Finally, clause 9(1) states:

The Governor in Council may, on the recommendation of the Minister and on such terms and conditions as the Governor in Council considers appropriate, authorize the removal, destruction, alteration, sale, assignment, transfer or other disposal of a heritage lighthouse.

The key, though, is that the Canadian public will have been consulted first.

In conclusion, honourable senators, these are not partisan issues. There currently exists a so-called "doomsday list" of lighthouses, some of which are heritage lighthouses, that are about to be demolished without even a thought of public consultation. There is a legislative void to guide the work of our tireless public servants. This is simply not right.

What would Cape Spear, Newfoundland be like 20 years from now if it were decided to sell the historic lighthouse there to private interests, or simply to pull it down? What of the Yarmouth lighthouse that was due to go to the community, the fate of which now hangs in the balance due to real environmental concerns? What of the few real lighthouses left on the St. Lawrence, not the small, modern two- or three-metre tall posts with a light bulb at the top? I am talking about real lighthouses. What of the historic lighthouse on Georges Island in Halifax Harbour along with several historic structures now virtually ready for collapse?

It is for the preservation of Canadian culture that we need the Heritage Lighthouse Protection Act.

• (110)

Finally, Bill S-21 will empower citizens and communities to take an active part, along with government, in preserving our heritage for future generations. It is for this purpose that I seek your support.

On motion of Senator Hays, for Senator Callbeck, debate adjourned.

### CRIMINAL CODE

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Milne, for the second reading of Bill S-9, to amend the Criminal Code (abuse of process).—(*Honourable Senator Kinsella*).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I have a few words on Bill S-9.

We all understand the motivation that one delays the presentation of this bill as we have delved into it in the past. As honourable senators know, it is really trying to come to grips with the problem of false accusations in cases of custody and access.

I remind honourable senators of the work of the Special Joint Committee on Child Custody and Access. In the report of that joint committee, we were told that the committee heard a great deal of testimony from parents involved in custody and access disputes, who felt that they were being undermined by false accusations of physical or sexual abuse by their spouse or former spouse.

That joint committee heard many examples of parents being unable to see their children for years while these allegations were under investigation. Tragically, at the end of the day, the allegations were proven to be false, and the human suffering that flowed from those accusations and the injustice of it all was underscored by the committee. In the committee report of December 1988, there was this recommendation:

This Committee recommends that, to deal with intentional false accusations of abuse or neglect, the federal government assess the adequacy of the Criminal Code in dealing with false statements in family law matters and develop policies to promote action on clear cases of mischief, obstruction of justice or perjury.

The government's response to that report was to announce a further three-year study. We do not have a government proposal or even an indication before Parliament as to how it wishes to

deal with this problem of false accusations. I believe it is quite appropriate that the Senate provide a tremendous legislative and policy development service by bringing forward S bills in the house. This one was before us before and had gone to committee. I should think that, if it was to be referred to perhaps, the Legal Committee, there would be a canvassing of views, a putting together of the up-to-date data. Some time has elapsed since the joint committee looked at this issue.

The Senate provides a policy development service when it initiates such bills, sends them to committee and invites this kind of study. Therefore, we would support that course of action.

On motion of Senator Hays, debate adjourned.

### CHANGING MANDATE OF THE NORTH ATLANTIC TREATY ORGANIZATION

REPORT OF FOREIGN AFFAIRS COMMITTEE ON STUDY—  
DEBATE ADJOURNED

The Senate proceeded to consideration of the seventh report of the Standing Senate Committee on Foreign Affairs entitled: "The New NATO and the Evolution of Peacekeeping: Implications for Canada", tabled in the Senate on April 5, 2000.—(*Honourable Senator Stollery*).

**Hon. Peter A. Stollery** moved the adoption of the report.

He said: Honourable senators, I should like to take a few minutes to speak on the seventh report of the Standing Senate Committee on Foreign Affairs.

As honourable senators know, the Foreign Affairs Committee spent a great deal of time holding hearings and investigating the new NATO.

Before I say anything, I would like to thank my predecessor, former senator Stewart, under whose chairmanship much of the work of our report, which was tabled in the Senate a few weeks ago, was done. He made a great contribution to this report on the new NATO.

Members of the Foreign Affairs Committee are very proud of this nearly 90-page report. It covers a great many subjects. The Foreign Affairs Committee has essentially examined economic matters for many years, not defence matters. The members of the committee did not come to this subject with strong views. We were not anti- or pro-NATO. Our report is the result of investigations and hearings, not one that was already in our minds when we started. That is very important, because there are anti-NATO people and pro-NATO people. The Foreign Affairs Committee of the Senate was very independent.

• (1720)

We questioned a broad range of witnesses in Ottawa, London, Paris, Bonn, Brussels and Mons, Washington, and at the United Nations in New York.



For the record, the project was an exhausting one: it really was. During our four or five days in Brussels, we included meetings at the European Union, which resulted in our report entitled "Europe Revisited." Our former chairman, my predecessor, former senator Stewart, tabled that report in the Senate before he retired in November. In these investigations, we did two reports at the same time, although it must be said that our efforts were concentrated on the new NATO and the evolution of peacekeeping.

Honourable senators, Senator Lynch-Staunton played a very important role in the genesis of this study. I must say, however, that shape of the study changed as it went along. It was a very strange experience. Our chairman, along with many of the members, perhaps all of them, became more interested as we went along. Remember, honourable senators, our study began about a year ago, just as events in Kosovo were unfolding. Although we did not set out to study Kosovo, we could not ignore the fact that NATO, the subject of our study, had just become involved in, I think, its first non-NATO campaign, because Kosovo, as we have noted very clearly in our report, was what is known as an out-of-area operation, or to those who study NATO matters, a non-Article 5 intervention.

This is very important, because anyone who takes the time — and it does not take very much time — to read the 16 articles of the original NATO treaty will know that the treaty is a short, clear, and simple treaty. One does not have to be a lawyer or an expert in drafting to understand the NATO treaty. Article 5 is the guts of the treaty. It explains that it is a mutual self-defence treaty and states that, if any of the members is attacked, the others have to go to their defence.

NATO got its start in 1949, at the beginning of the Cold War. The problem for NATO became that the enemy left: the Soviet Union was no longer there. The Soviet Union collapsed, and the question became: What does NATO do? That is what the committee studied. What does NATO do? NATO, itself, in fact, has been wondering what it does. It changed its original terms of reference in November 1991 and again last April. While the original NATO treaty is very simple, a reading of the NATO terms of reference after the fall of the Berlin Wall is evidence of a much more vague treaty. That resulted, last year, in NATO involving itself in its first non-Article 5 intervention. That is the term that is used.

Of course, members of the committee asked: What is the legal basis for a non-Article 5 intervention? Speaking for myself as the new chairman, I found the replies unsatisfactory. What was the legal basis for the Kosovo intervention? NATO is a self-defence organization, authorized under the Charter of the United Nations, but when they attempted to establish a legal basis for the Kosovo intervention, it became less than clear.

In our report, we deal with the old NATO, the one before 1990. That is the NATO we all understood during the Cold War. Then we talk about the new NATO — the moving target, as I describe it. The terms of reference have been changed twice, and undoubtedly will be changed again, because NATO is looking for a role.

In 1996, I believe, the Foreign Affairs Committee undertook its first European study, and we ended up in Brussels. Naturally, when we were in Brussels, we went to NATO. We got the NATO briefing that everyone always gets, and the question could not escape us: What do they do now? The Soviet Union does not exist any longer, so just what does the organization do? This, of course, is a question that a lot of people are asking.

Honourable senators, in our report, we made 16 recommendations, all of them extremely good.

We questioned the legal basis for these interventions. We do not think Canada should be involved in interventions that are not authorized by the United Nations, or else there should be some other very clear and good reason for our being involved.

We would like to know more about the definition of "human security." We think that we are in favour of human security but we would like to know what the internationally accepted definition is.

That is why, in recommendation number 14, we recommend that the Main Estimates of the Department of Foreign Affairs and International Trade and the Department of National Defence be referred to the Standing Senate Committee on Foreign Affairs for review.

Let me remind all honourable senators that this is a unanimous report. Both parties in the Senate supported this report unanimously. We are very interested in having some meetings with the Department of Foreign Affairs and the Department of National Defence so that some of the questions members of the committee have can be answered as we look at the estimates of the two departments. We think that would be an important reform of the system. If there is any single point that leaps out at one, it is that there does not seem to be a great deal of parliamentary input into these decisions.

• (1730)

We have also noted very strongly that Parliament should be more involved in decisions that involve sending Canadian soldiers to conflict situations, peacemaking and peacekeeping missions. We suggest that the government clearly spell out Canada's interests and the scope of Canadian involvement. In Recommendation No. 12, we say that Parliament should have a direct role in the review of important international agreements, while Recommendation No. 13 states:

That both houses of Parliament have the opportunity to debate and approve at the earliest possible moment Canadian participation in any military intervention or external conflict situation, including peacekeeping and peacemaking missions, with the Government clearly spelling out Canada's interest in the situation and the scope of Canadian involvement.

These are good recommendations. They are very important recommendations.

In the changing international environment, NATO is looking for a role that is unclear. We discussed the European Strategic Defence Identity in our report. Will the Europeans, because of their dependence on the United States in NATO, develop their own defence arrangements, in particular, regarding heavy lift? Presently, they are unable to get the equipment there. As well, what about satellite communications and a common procurement policy?

It is fair to say that the members of the committee were more skeptical of the European strategic defence initiative at the beginning of our hearings than we were at the end. At the end, many of us thought, "Where does this all leave Canada?" That is the question: Where does it leave us? What if the European Union, the world's most powerful trading block, develops its own army — and they have talked about it — as well as a common foreign policy and a common defence policy? If they go ahead, as they say they will and as some people say they should, we do not know where that leaves the Americans. Furthermore, where does it leave Canada? That is the question our committee wants to put to Canadians and to the Canadian government.

Honourable senators, we are a founding member of NATO, but what if NATO leaves us, which is the phrase we use in our report?

**The Hon. the Speaker *pro tempore*:** Honourable senators, the speaking time for the Honourable Senator Stollery has expired. Is he asking for leave to continue?

**Senator Stollery:** May I have leave to continue, honourable senators?

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Stollery:** Where does this leave us, honourable senators? The Foreign Affairs Committee of the Senate will certainly be following this issue and asking these questions.

I will end by thanking my colleagues from the Foreign Affairs Committee, who put in an enormous amount of time working on this report. We are all proud of our work and of the result of our work. I want to thank them for taking so much of their time contributing to this report.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, would Senator Stollery permit a brief question?

**Senator Stollery:** Yes.

**Senator Hays:** Senator Stollery referred to Recommendation No. 13 as a parliamentary role — that is, when the executive takes a decision such as the stretch that they took using NATO to intervene in Kosovo. I remember the event because I was there. It caused a controversy. It came to Parliament's attention. What more would he envisage Parliament doing and to what extent

does he see the executive being tied to an executive decision before action is taken?

My second question concerns the National Missile Defence initiative that is being proposed by the United States. Senator Forrester gave a speech on this subject and it was raised in Question Period as well. Regarding the post-Cold War role of NATO and the possible divorce between Europe and North America in terms of the current cohabitation through NATO, what should our position be on the National Missile Defence initiative of the United States and our participation in it?

**Senator Stollery:** Honourable senators, I cannot respond to the question concerning that defence system because the committee did not discuss it. It was not in our mandate. The information in our report is based on the evidence we collected. We did not put anything in the report that we did not hear a lot of evidence about. I cannot comment about the missile defence system. It may well be part of the evolving NATO. That is to say, it may well be that the Americans will be defending themselves rather than NATO. I do not know.

As to the senator's first question about Parliament, we have been very careful not to bind the government. We understand perfectly well that the executive in our parliamentary system makes decisions. We have been very careful not to impede the power of executive decision. We discuss this issue in the report and did a thorough job on that subject. We heard from an excellent legal advisor.

Chapter VIII of the report is entitled "Parliament and Canada's External Security Commitments." We state that the first role of Parliament is to examine the financing of these operations. However, we do not believe that the examination of the financing has been particularly thorough. For example, from where did the money come to pay for Kosovo? In our system of government, when the minister or the departmental officials go before the committee of the House of Commons, they are asked questions about how the money was spent. It has been said that this is not being done very effectively. We have allotted an entire chapter to this subject.

Over the years, Parliament has been consulted less and less on matters of foreign involvement. It has been the opposite in other countries. Even in 1939, Prime Minister King spoke to the House of Commons. In Canada, there has been a lessening of parliamentary consultation. We think that should be ended, but not to the degree that the government cannot act. We are not saying that. I think that answers Senator Hays' question.

[Translation]

• (1740)

**Hon. Roch Bolduc:** Honourable senators, I should like to point out that Senator Lynch-Staunton was particularly active on the committee. He made an outstanding contribution, and should not forget the deputy chair of the committee, Senator Andreychuk, who already has a long experience in international affairs.



[English]

Honourable senators, when faced with the threat of the Soviet Union after World War II, it became obvious to Americans and Europeans that they had to create a strategic defence alliance. It was for this purpose that NATO came into existence. It was for this reason that West Germany became bound to Western Europe. This is what happened and it was a success in that peace was maintained without any major armed conflict.

After the fall of the Berlin Wall, the Soviet threat faded, but the transatlantic link remained an essential insurance policy for world peace, as it was not known what would become of Russia.

As for trading nations such as Canada, world peace was an essential condition to our prosperity. The same was true of the United States-Japan defence alliance, in light of the uncertainty surrounding China's future. Together with the Americans, Canada also joined NORAD, to provide for the joint defence of North America.

Apart from these geo-political uncertainties, NATO has focussed over the past decade on other less global but nevertheless real threats to what foreign affairs has called human security — that is to say, the security of civilians as opposed to that of the alliance states, which, more often than not, is threatened by conflicts such as inter-racial issues, terrorist acts and so on.

These types of conflicts alter NATO's activities and add a new dimension to its international role. This was how we came to develop the concept of peacemaking as opposed to the peacekeeping activities of our armed forces, activities that have long been under way in the context of the United Nations.

The Minister of Foreign Affairs has spoken out several times in recent years to explain and justify this type of intervention. Among other things, I am thinking of the minister's speeches at Middlebury College, last February, in Calgary, in March, and his recent address to the Security Council.

We are far from being on the verge of nuclear war, even though certain Middle Eastern states and North Korea are still special cases. We have not forgotten the tension between India and Pakistan, Iran and Iraq, and other countries. We are thinking mainly of the delicate situation in the Balkans and tribal conflicts in Africa where Europe maintains an interest.

The concept of peacemaking is still developing, but the remarks by the UN Secretary General and Mr. Axworthy reveal the varied nature of the causes of peacemaking efforts and of the security activities to which they are likely to lead. This situation is thus likely to alter the nature of our armed forces. Authorities refer at times to armed intervention as a way to stop conflicts such as those in Kosovo. With others, they consider policing efforts, such as where the RCMP is involved — and here I am referring not only to Haiti — and at others they engage in civil administration and even social work in regions devastated by conflict.

The potential danger here, honourable senators, is that of state activism which can arise because there are no longer any clear decision-making centres, or because Parliament is ignored or information on potential missions is defective or biased or the cost of missions are concealed. We must be clear and selective. Our interests must also be concerted in establishing the criteria that will guide Canada's actions.

In the case of Kosovo, for example, it is now quite certain that Canada has made a long-term commitment without any real, preliminary or serious public discussion in Canada.

The Treasury Board, for example, estimates Canada's costs in this operation at \$500 million, in 1999; and at \$350 million for 2000. There were probably also costs in 1998 in the preparation period, but the figure for that is not given. I hope that we have not placed ourselves in the situation of another Cyprus, a 25-year venture, which, in 1987, cost us \$1 billion per year, because it also partly justified our presence in Germany at the time.

[Translation]

Data now available on the conflict in Kosovo seem to indicate that, first, Mr. Clinton had other existential concerns when he said yes to Mr. Blair, who himself might have been driven by his own eloquence, second, that atrocities did not cease during the war and, third, that we are not yet reached the end of the tunnel in this conflict in former Yugoslavia.

I will let others debate the legality of the NATO intervention in Kosovo and simply say that, in the future, we will have to be more careful before ignoring the will of the Security Council, even if it needs to seriously review its mandate, and even ignore the will of the United Nations.

However, this conflict has had a positive impact on another level: the image that Europeans have of themselves. I think that the European conscience, which was heretofore monopolized by economic and financial issues, has now been extended to security and defence issues.

Western Europeans realized, honourable senators, their logistical incapacity to deploy their forces on their own continent, their lack of equipment and tactical information, the absence of coordinated management of personnel, and so on. In short, it was a clear reminder that NATO is first and foremost U.S. might, even 50 years after World War II.

The resulting European defence initiative is a healthy and legitimate movement. It will take a lot of time and the willingness to coordinate the defence budgets of our European allies. It will be as important a test as Maastricht with regard to the willingness of the French, the British and the Germans to work together and to coordinate their forces and their materiel purchases.

What is important for us is that this initiative is developing within NATO in order to preserve the transatlantic tie to which I was referring earlier and which is so vital to us.

I should now like to talk about the very important issue of government accountability in foreign affairs in general, but particularly in the area of defence and, to a lesser extent, in the area of international aid. It is not the first time, honourable senators, that I raise this issue here. I do so again today because I believe that it is fundamental to Canadian democracy and that an adjustment is necessary in the evolution of our parliamentary practices.

Under the Canadian Constitution, which is 133 years old and inspired by Westminster, the government or executive has the upper hand over foreign policy including security matters; the government enters into treaties, declares war and deals with foreign countries.

For its part, Parliament amends or not Canadian laws to bring them in line with the obligations stemming from the treaties entered into by the government and appropriates or not the funds necessary for war expenses or foreign aid.

Parliament may also hold debates on any issue it deems necessary to bring to the public's attention; it may also question the government on its public policies or criticize them. In a nutshell, this is where Canada's constitutional law is at in this regard.

Parliamentary practice in this respect varies a lot. In the 1920s, Prime Minister Mackenzie King, frustrated by the military commitments involving Canada made by London, made sure that Parliament passed a resolution in the summer of 1939 before Canada declared war in September 1939.

The United Nations Charter in 1945 and the NATO treaty in 1949 were submitted to Parliament before they were ratified by the government. The same approach was followed to amend the NATO treaty in order to admit Greece and Turkey in 1952, and Germany in 1955.

During this period, Parliament's participation in the decision to deploy troops abroad has been sporadic, as stated by our committee chairman, Senator Stollery. In the case of Cyprus, the Gulf War and Somalia, Parliament was consulted, but it was not on Korea, Zaire and Kosovo.

[English]

Similarly, the NORAD agreement, in 1958, was not submitted for Parliament's approval, nor was the admission of new members such as Spain, in 1982, or Hungary, Poland and Czechoslovakia, in 1999. Even well-established customs such as the tabling of international agreements in Parliament was abandoned.

Honourable senators, I submit that this situation is utterly unacceptable and that Parliament must be more consistent with the requirements of democracy in the 21st century. It is not because Canada is a member of the United Nations organization that it must take part in all operations authorized by the United Nations, the nation's voice must be heard before young people are sent to face enemy fire.

In security matters, it cannot be taken for granted that what the minister wishes will always be desirable for the people. For example, if the minister is in favour of policing operations, he will want to establish order around the world, despite the sad advice of our former ambassador to the United States, who maintains that even the United States cannot do that. Thus, if the minister is a proponent of military operations, he will need troops on every front. If he is more of a social worker, he will have to be involved in all humanitarian undertakings.

• (1750)

Honourable senators, I submit that it is wise that ministerial aims be viewed against those of Parliament so that what the people view as important foreign policy, security and international aid issues can be ascertained.

A very serious effort must therefore be made to remedy Parliament's virtual absence from these important areas, which is an unhealthy development for Canadian democracy.

I understand that the British tradition of our parliamentary system favours the executive branch of government, which historically held all powers, much more than the republican systems of the United States and France. The British system existed prior to the advent of democracy and, although it has been influenced by that event, it remains, perhaps more so in Canada than in England itself, characterized by the predominance, although not domination, of the government over the power.

Honourable senators, I submit that, in the year 2000, it is high time we change the way in which we do things and that we submit the government to rules that, while allowing it reasonable room to manoeuvre in order to be effective, reasonably restrict its discretionary power. The other Western democracies appear to give their parliaments a broader official role in reviewing major foreign policy decisions: declaration of war resolutions, prior debate and approval of treaties, debate on important agreements and authorization to deploy military forces abroad.

In England, for example, our report discusses the "Ponsonby rule", which, since 1920, has required that international agreements that are to be ratified be communicated to the House of Parliament at least 21 days prior to ratification — hence, the importance of our recommendations 12 to 15 on page 84 of the report.

I will say that I would personally prefer to see a constitutional amendment partially limiting the discretion of the executive branch in foreign policy. In other words, it seems to me that the general rule of liberal societies that the government may do nothing unless authorized by Parliament is a wise rule, whereas now appears to be the rule that the government can do everything except what it is prohibited from doing. I would remind honourable senators that, in true liberal societies, it is individuals that enjoy this freedom, not governments, which should be governed by the rule that they may do nothing except what is permitted by law.



Failing an appropriate constitutional amendment, we should perhaps consider including in the Department of Foreign Affairs' enabling statute criteria that will set limits for departmental intervention abroad in the field of human security, such as, for example, a resolution by the United Nations General Assembly in the case of mass genocide.

In his speech at Middlebury College, Minister Axworthy spoke more openly than previously about the criteria for military intervention outside Canada.

We have addressed security issues here. In closing, I wish to emphasize that this rule should also prevail as regards development assistance to Third World countries and in national and international commitments through the specialized institutions of the UN or those established under the Bretton Woods accords. Here, as well, limits must be placed on ministerial discretion through clear statutory criteria known to all.

While that discretion must be broad enough to permit flexible ministerial action where required, its limits must not be so unclear as to lead to bureaucratic abuse. I would recall here that an organization as important as CIDA was not even constituted by an act of Parliament, but by a mere Order in Council. However, this organization annually allocates \$2 billion in public funds for various purposes. Statutory criteria are clearly called for here in order to set parameters for administrative action.

Just as in security matters Parliament's voice must be heard before the government gives orders to the Armed Forces, so the voice of the people must guide the diplomatic actions of ambassadors.

You must understand, honourable senators, that as a former senior public servant I have the greatest respect for military personnel, diplomats and ministers, but, in free societies, the law as enacted by Parliament must rightly be the supreme guide of government action.

On motion of Senator Andreychuk, debate adjourned.

[Translation]

**The Hon. the Speaker *pro tempore*:** Honourable senators, it is 5 p.m. Is leave granted for the Chair not to see the clock?

[English]

**Hon. Dan Hays (Deputy Leader of the Government):** I do not think it is quite six o'clock, Your Honour. However, if you

wish, I suggest that if we go past six o'clock and we only have a few items of business with which to deal that we not see the clock.

**The Hon. the Speaker *pro tempore*:** It is agreed, honourable senators?

**Hon. Senators:** Agreed.

# **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

MOTION TO INSTRUCT COMMITTEE TO AMEND—  
POINT OF ORDER—SPEAKER'S RULING

On the Order:

Motion of the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Kinsella:

That upon committal of Bill C-20 to committee, that the committee be instructed to amend Bill C-20 to rank the Senate of Canada as an equal partner with the House of Commons, and report back accordingly.—(*Speaker's Ruling*).

**The Hon. the Speaker *pro tempore*:** Honourable senators, on Tuesday, April 11, when Senator Lynch-Staunton, the Leader of the Opposition, moved a motion of instruction, Senator Hays, the Deputy Leader of the Government, rose on a point of order. Senator Hays claimed that the motion of instruction was out of order because it was not in the correct form. The motion of Senator Lynch-Staunton seeks to instruct the committee that would examine Bill C-20 to make certain amendments "to rank the Senate of Canada as an equal partner with the House of Commons." According to Senator Hays, this instruction is mandatory in form and consequently is out of order. Senator Hays argued that the instruction must be permissive, rather than mandatory, because the power to amend the bill is a power that the committee already possesses. In support of his position, Senator Hays referred to a ruling of November 1995, as well as to Bourinot's *Parliamentary Procedure and Practice in the Dominion of Canada*.

[Translation]

Subsequently, there were some other interventions by several senators, including Senator Lynch-Staunton who supported his motion with a citation from Beauchesne's *Parliamentary Rules & Forms* as well as a reference to the *Companion to the Standing Orders and Guide to the Proceedings to the House of Lords*. I want to thank all senators who spoke on the point of order. I have reviewed the material and the references that were cited during the discussion on the point of order. I am now prepared to give my ruling.

[English]

Motions of instruction are relatively infrequent in Canadian parliamentary practice. They are not a regular feature in either the Senate or the House of Commons, and it is not altogether surprising that their use can give rise to some confusion. A motion of instruction was last moved in the Senate December 6, 1999 by Senator Murray. In that particular case, the instruction proposed to empower the committee to divide Bill C-6, a bill dealing with electronic commerce. This motion was taken up for consideration immediately after the bill had received second reading. As it happened, however, no decision was taken with respect to the motion, because it was withdrawn some days later after the Senate had actually disposed of Bill C-6.

• (1800)

The point of order raised by Senator Hays focuses on the question of whether the motion of instruction should be in a permissive form rather than in the mandatory style proposed by Senator Lynch-Staunton. If it is determined that the point of order is well founded, then the motion must be ruled out of order.

In trying to determine the proper answer to this proposition, I felt obliged to investigate some of the history of motions of instruction in earlier editions of *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, the British parliamentary authority. This seemed appropriate given the limited use made of instructions in the Canadian Parliament and the fact that these motions are derived from British parliamentary practice.

[Translation]

Motions of instruction developed in the British Parliament at a time when the powers of committees were narrowly defined and severely constrained. Through the eighteenth century and into the first decades of the nineteenth, it would seem that the authority of committees to amend bills was so limited that they frequently required instructions from the House to carry out their work effectively. A partial remedy to this problem was to incorporate within the rules or standing orders of the House, certain powers whereby the committees acquired the authority to make amendments to legislation so long as those amendments were generally within the scope of the bill and were relevant. Thereafter, the need for instructions became less frequent and they developed certain characteristics which remain generally the same to this day. Among these characteristics was the distinction between permissive and mandatory instructions. The more ordinary instruction was the permissive instruction which empowered a committee to exercise certain powers at its discretion. Instructions had to be in the permissive form if they were to apply to committees which already possessed some authority under the standing orders. Instructions could be either permissive or mandatory if the committees involved possessed no powers because they were created on an *ad hoc* basis or if they concerned private bills.

[English]

Applying this basic distinction to the rules of the Senate as they are presently written, it would seem to me that motions of instruction to a committee with respect to the study of public bills must be in the permissive form. This is because our rules already authorize any committee examining a bill to recommend any relevant amendments it deems appropriate. Thus, a committee looking at Bill C-20 has the power to amend it in the way suggested by the motion of instruction proposed by Senator Lynch-Staunton. The text of the motion, however, is mandatory in its form and this is contrary to established usage. This position is supported by recent Canadian authorities, including Beauchesne, and is confirmed in the latest Canadian parliamentary manual, *House of Commons Procedure and Practice*, at page 641 as follows:

Motions of instruction respecting bills are permissive rather than mandatory.

[Translation]

Moreover, the present motion of instruction, even if it has been written in the permissive form, would still not pass muster procedurally. There are various criteria listed in *Erskine May* on admissible and inadmissible instructions. Admissible instructions can authorize a committee to treat legislation in a variety of different, but specific, ways. Among the instructions which are acceptable are motions empowering a committee to divide a bill to consolidate several bills or to report separately on different parts of a bill. The motion of instruction of Senator Lynch-Staunton seeks to do none of these things. Rather it seeks to instruct the committee to do something which it already has the power to do. This in fact, is a form of instruction which is recognized to be inadmissible because it is superfluous.

[English]

Beyond this, there is still another reason the motion would give rise to some doubts about its acceptability, quite apart from what has already been discussed. Any motion seeking to authorize or direct a committee in its study of a particular bill must be clear and explicit. As I read it, the current motion does not meet this standard. In seeking to have the committee make whatever changes are required "to rank the Senate of Canada as an equal partner with the House of Commons," the motion is not providing an instruction that is adequately explicit. The language is not clear or specific enough. It does not allow the committee to understand definitely what provisions the Senate desires that it should take into consideration. For these reasons, therefore, I rule that the motion of instruction proposed by Senator Lynch-Staunton is out of order.

As a final comment, while the point of order was raised at the earliest opportunity when the motion of instruction was first called, I think it advisable to note that a motion of instruction cannot properly be taken up for debate prior to the adoption of the second reading motion on the bill to which it relates. Again, all the authorities are clear on this. Beauchesne states, in paragraph 684 on page 204, that:



The time for moving an Instruction is immediately after the committal of the bill, or, subsequently, as an independent motion. The Instruction should not be given while the bill is still in the possession of the House, but rather after it has come into the possession of the committee. If the bill has been partly considered in committee, it is not competent to propose an Instruction.

### CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION

MOTION URGING RECONSIDERATION OF RULING DENYING  
TVONTARIO REQUEST TO DISTRIBUTE TÉLÉVISION FRANÇAISE DE  
L'ONTARIO IN QUEBEC WITHDRAWN

On Motion No. 56:

That the Senate recommend to the Government of Canada that it request the Canadian Radio-Television and Telecommunications Commission (CRTC) to reconsider the decision handed down on March 1, 2000, regarding the application by TVOntario – TFO (French-language television channel), in order to allow the only network producing French and cultural programming outside Quebec to distribute that programming in Quebec by cable.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I rise at the request of Senator Gauthier to ask leave of the Senate to withdraw this motion standing in his name. Briefly, the reason for the request is that Senator Gauthier, as, in the absence of a response from the Chairman of the CRTC, become frustrated with this approach and has commenced legal action to seek a remedy, the thrust of this motion being the reconsideration of a CRTC decision.

Therefore, on behalf of Senator Gauthier, I request leave for this motion to be withdrawn from the Notice Paper. I should be happy to give further clarification if requested.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted to allow that Motion No. 56 standing in the name of Senator Gauthier be withdrawn from the Notice Paper?

**Hon. Senators:** Agreed.

Motion withdrawn.

### ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 3, 2000, at 1:30 p.m.:

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate:

That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, May 3, 2000, at 1:30 p.m.





## **APPENDIX**

Officers of the Senate

The Ministry

Senators

(Listed according to seniority, alphabetically and by provinces)

Committees of the Senate

**THE SPEAKER**

THE HONOURABLE GILDAS L. MOLGAT

**THE LEADER OF THE GOVERNMENT**

THE HONOURABLE J. BERNARD BOUDREAU, P. C.

**THE LEADER OF THE OPPOSITION**

THE HONOURABLE JOHN LYNCH-STAUNTON

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**OFFICERS OF THE SENATE****CLERK OF THE SENATE AND CLERK OF THE PARLIAMENTS**

PAUL BÉLISLE

**DEPUTY CLERK, PRINCIPAL CLERK, LEGISLATIVE SERVICES**

GARY O'BRIEN

**LAW CLERK AND PARLIAMENTARY COUNSEL**

MARK AUDCENT

**USHER OF THE BLACK ROD**

MARY McLAREN



**THE MINISTRY**

According to Precedence

(May 2, 2000)

The Right Hon. Jean Chrétien	Prime Minister
The Hon. Herbert Eser Gray	Deputy Prime Minister
The Hon. Lloyd Axworthy	Minister of Foreign Affairs
The Hon. David M. Collenette	Minister of Transport
The Hon. David Anderson	Minister of the Environment
The Hon. Ralph E. Goodale	Minister of Natural Resources and Minister responsible for the Canadian Wheat Board
The Hon. Sheila Copps	Minister of Canadian Heritage
The Hon. John Manley	Minister of Industry
The Hon. Paul Martin	Minister of Finance
The Hon. Arthur C. Eggleton	Minister of National Defence
The Hon. Anne McLellan	Minister of Justice and Attorney General of Canada
The Hon. Allan Rock	Minister of Health
The Hon. Lawrence MacAulay	Solicitor General of Canada
The Hon. Alfonso Gagliano	Minister of Public Works and Government Services
The Hon. Lucienne Robillard	President of the Treasury Board and Minister responsible for Infrastructure
The Hon. Martin Cauchon	Minister of National Revenue and Secretary of State (Economic Development Agency of Canada for the Regions of Quebec)
The Hon. Jane Stewart	Minister of Human Resources Development
The Hon. Stéphane Dion	President of the Queen's Privy Council for Canada and Minister of Intergovernmental Affairs
The Hon. Pierre Pettigrew	Minister of International Trade
The Hon. Don Boudria	Leader of the Government in the House of Commons
The Hon. J. Bernard Boudreau	Leader of the Government in the Senate
The Hon. Lyle Vanclief	Minister of Agriculture and Agri-Food
The Hon. Herb Dhaliwal	Minister of Fisheries and Oceans
The Hon. Claudette Bradshaw	Minister of Labour
The Hon. George Baker	Minister of Veterans Affairs and Secretary of State (Atlantic Canada Opportunities Agency)
The Hon. Robert Daniel Nault	Minister of Indian Affairs and Northern Development
The Hon. Maria Minna	Minister for International Cooperation
The Hon. Elinor Caplan	Minister for Citizenship and Immigration
The Hon. Ethel Blondin-Andrew	Secretary of State (Children and Youth)
The Hon. Raymond Chan	Secretary of State (Asia-Pacific)
The Hon. Hedy Fry	Secretary of State (Multiculturalism) (Status of Women)
The Hon. David Kilgour	Secretary of State (Latin America and Africa)
The Hon. James Scott Peterson	Secretary of State (International Financial Institutions)
The Hon. Ronald J. Duhamel	Secretary of State (Western Economic Diversification) and Francophonie
The Hon. Andrew Mitchell	Secretary of State (Rural Development) (Federal Economic Development Initiative for Northern Ontario)
The Hon. Gilbert Normand	Secretary of State (Science, Research and Development)
The Hon. Denis Coderre	Secretary of State (Amateur Sport)

## SENATORS OF CANADA

## ACCORDING TO SENIORITY

(May 2, 2000)

Senator	Designation	Post Office Address
THE HONOURABLE		
Herbert O. Sparrow	Saskatchewan	North Battleford, Sask.
Gildas L. Molgat, Speaker	Ste-Rose	Winnipeg, Man.
Edward M. Lawson	Vancouver	Vancouver, B.C.
Bernard Alasdair Graham, P.C.	The Highlands	Sydney, N.S.
Raymond J. Perrault, P.C.	North Shore-Burnaby	North Vancouver, B.C.
Louis-J. Robichaud, P.C.	L'Acadie-Acadia	Saint-Antoine, N.B.
Jack Austin, P.C.	Vancouver South	Vancouver, B.C.
Willie Adams	Nunavut	Rankin Inlet, Nunavut
Lowell Murray, P.C.	Pakenham	Ottawa, Ont.
C. William Doody	Harbour Main-Bell Island	St. John's, Nfld.
Peter Alan Stollery	Bloor and Yonge	Toronto, Ont.
Peter Michael Pitfield, P.C.	Ontario	Ottawa, Ont.
William McDonough Kelly	Port Severn	Mississauga, Ont.
E. Leo Kolber	Victoria	Westmount, Que.
Michael Kirby	South Shore	Halifax, N.S.
Jerahmiel S. Grafstein	Metro Toronto	Toronto, Ont.
Anne C. Cools	Toronto-York	Toronto, Ont.
Charlie Watt	Inkerman	Kuujuaq, Que.
Daniel Phillip Hays	Calgary	Calgary, Alta.
Joyce Fairbairn, P.C.	Lethbridge	Lethbridge, Alta.
Colin Kenny	Rideau	Ottawa, Ont.
Pierre De Bané, P.C.	De la Vallière	Montreal, Que.
Eymard Georges Corbin	Grand-Sault	Grand-Sault, N.B.
Brenda Mary Robertson	Riverview	Shediac, N.B.
Jean-Maurice Simard	Edmundston	Edmundston, N.B.
Michel Cogger	Lauzon	Knowlton, Que.
Norman K. Atkins	Markham	Toronto, Ont.
Ethel Cochrane	Newfoundland	Port-au-Port, Nfld.
Eileen Rossiter	Prince Edward Island	Charlottetown, P.E.I.
Mira Spivak	Manitoba	Winnipeg, Man.
Roch Bolduc	Golfe	Sainte-Foy, Que.
Gérald-A. Beaudoin	Rigaud	Hull, Que.
Pat Carney, P.C.	British Columbia	Vancouver, B.C.
Gerald J. Comeau	Nova Scotia	Church Point, N.S.
Consiglio Di Nino	Ontario	Downsview, Ont.
Donald H. Oliver	Nova Scotia	Halifax, N.S.
Noël A. Kinsella	New Brunswick	Fredericton, N.B.
John Buchanan, P.C.	Nova Scotia	Halifax, N.S.
Mabel Margaret DeWare	New Brunswick	Moncton, N.B.
John Lynch-Staunton	Grandville	Georgeville, Que.
James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie, Ont.
J. Trevor Eyton	Ontario	Caledon, Ont.
Wilbert Joseph Keon	Ottawa	Ottawa, Ont.
Michael Arthur Meighen	St. Marys	Toronto, Ont.
Normand Grimard	Quebec	Noranda, Que.
Thérèse Lavoie-Roux	Quebec	Montreal, Que.
J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth, N.S.
Janis Johnson	Winnipeg-Interlake	Winnipeg, Man.
Eric Arthur Berntson	Saskatchewan	Saskatoon, Sask.
A. Raynell Andreychuk	Regina	Regina, Sask.
Jean-Claude Rivest	Stadacona	Quebec, Que.
Terrance R. Stratton	Red River	St. Norbert, Man.



## ACCORDING TO SENIORITY

Senator	Designation	Post Office Address
THE HONOURABLE		
Marcel Prud'homme, P.C.	La Salle	Montreal, Que.
Fernand Roberge	Saurel	Ville Saint-Laurent, Que.
Leonard J. Gustafson	Saskatchewan	Macoun, Sask.
Erminie Joy Cohen	New Brunswick	Saint John, N.B.
David Tkachuk	Saskatchewan	Saskatoon, Sask.
W. David Angus	Alma	Montreal, Que.
Pierre Claude Nolin	De Salaberry	Quebec, Que.
Marjory LeBreton	Ontario	Manotick, Ont.
Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Lise Bacon	De la Durantaye	Laval, Que.
Sharon Carstairs	Manitoba	Victoria Beach, Man.
Landon Pearson	Ontario	Ottawa, Ont.
Jean-Robert Gauthier	Ottawa-Vanier	Ottawa, Ontario
John G. Bryden	New Brunswick	Bayfield, N.B.
Rose-Marie Losier-Cool	New Brunswick	Bathurst, N.B.
Céline Hervieux-Payette, P.C.	Bedford	Montreal, Que.
William H. Rompkey, P.C.	Newfoundland	North West River, Labrador, Nfld.
Lorna Milne	Peel County	Brampton, Ont.
Marie-P. Poulin	Northern Ontario	Ottawa, Ont.
Shirley Maheu	Rougemont	Ville Saint-Laurent, Que.
Nicholas William Taylor	Sturgeon	Bon Accord, Alta.
Léonce Mercier	Mille Isles	Saint-Élie d'Orford, Que.
Wilfred P. Moore	Stanhope St./Bluenose	Chester, N.S.
Lucie Pépin	Shawinigan	Montreal, Que.
Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Catherine S. Callbeck	Prince Edward Island	Central Bedeque, P.E.I.
Marisa Ferretti Barth	Repentigny	Pierrefonds, Que.
Serge Joyal, P.C.	Kennebec	Montreal, Que.
Thelma J. Chalifoux	Alberta	Morinville, Alta.
Joan Cook	Newfoundland	St. John's, Nfld.
Ross Fitzpatrick	Okanagan-Similkameen	Kelowna, B.C.
The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto, Ont.
Francis William Mahovlich	Toronto	Toronto, Ont.
Calvin Woodrow Ruck	Dartmouth	Dartmouth, N.S.
Richard H. Kroft	Manitoba	Winnipeg, Man.
Douglas James Roche	Edmonton	Edmonton, Alta.
Joan Thorne Fraser	De Lorimier	Montreal, Que.
Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Vivienne Poy	Toronto	Toronto, Ont.
Sheila Finestone, P.C.	Montarville	Montreal, Que.
Ione Christensen	Yukon	Whitehorse, Yukon Territory
George Furey	Newfoundland	St. John's, Nfld.
Melvin Perry Poirier	Prince Edward Island	St. Louis, P.E.I.
Nick G. Sibbeston	Northwest Territories	Fort Simpson, N.W.T.
Isobel Finnerty	Ontario	Burlington, Ont.
J. Bernard Boudreau, P.C.	Nova Scotia	Halifax, N.S.
Tommy Banks	Alberta	Edmonton, Alta.
John Wiebe	Saskatchewan	Saskatchewan

## SENATORS OF CANADA

## ALPHABETICAL LIST

(May 2, 2000)

Senator	Designation	Post Office Address
THE HONOURABLE		
Adams, Willie	Nunavut	Rankin Inlet, Nunavut
Andreychuk, A. Raynell	Regina	Regina, Sask.
Angus, W. David	Alma	Montreal, Que.
Atkins, Norman K.	Markham	Toronto, Ont.
Austin, Jack, P.C.	Vancouver South	Vancouver, B.C.
Bacon, Lise	De la Durantaye	Laval, Que.
Banks, Tommy	Alberta	Edmonton, Alta.
Beaudoin, Gérald-A.	Rigaud	Hull, Que.
Berntson, Eric Arthur	Saskatchewan	Saskatoon, Sask.
Bolduc, Roch	Golfe	Sainte-Foy, Que.
Boudreau, J. Bernard, P.C.	Nova Scotia	Halifax, N.S.
Bryden, John G.	New Brunswick	Bayfield, N.B.
Buchanan, John, P.C.	Nova Scotia	Halifax, N.S.
Callbeck, Catherine S.	Prince Edward Island	Central Bedeque, P.E.I.
Carney, Pat, P.C.	British Columbia	Vancouver, B.C.
Carstairs, Sharon	Manitoba	Victoria Beach, Man.
Chalifoux, Thelma J.	Alberta	Morinville, Alta.
Christensen, Ione	Yukon Territory	Whitehorse, Yukon Territory
Cochrane, Ethel	Newfoundland	Port-au-Port, Nfld.
Cogger, Michel	Lauzon	Knowlton, Que.
Cohen, Erminie Joy	New Brunswick	Saint John, N.B.
Comeau, Gerald J.	Nova Scotia	Church Point, N.S.
Cook, Joan	Newfoundland	St. John's, Nfld.
Cools, Anne C.	Toronto-York	Toronto, Ont.
Corbin, Eymard Georges	Grand-Sault	Grand-Sault, N.B.
De Bané, Pierre, P.C.	De la Vallière	Montreal, Que.
DeWare, Mabel Margaret	New Brunswick	Moncton, N.B.
Di Nino, Consiglio	Ontario	Downsview, Ont.
Doody, C. William	Harbour Main-Bell Island	St. John's, Nfld.
Eyton, J. Trevor	Ontario	Caledon, Ont.
Fairbairn, Joyce, P.C.	Lethbridge	Lethbridge, Alta.
Ferretti Barth, Marisa	Repentigny	Pierrefonds, Que.
Finestone, Sheila, P.C.	Montarville	Montreal, Que.
Finnerty, Isobel	Ontario	Burlington, Ont.
Fitzpatrick, Ross	Okanagan-Similkameen	Kelowna, B.C.
Forrestall, J. Michael	Dartmouth and Eastern Shore	Dartmouth, N.S.
Fraser, Joan Thorne	De Lorimier	Montreal, Que.
Furey, George	Newfoundland	St. John's, Nfld.
Gauthier, Jean-Robert	Ottawa-Vanier	Ottawa, Ont.
Gill, Aurélien	Wellington	Mashteuiatsh, Pointe-Bleue, Que.
Grafstein, Jerahmiel S.	Metro Toronto	Toronto, Ont.
Graham, Bernard Alasdair, P.C.	The Highlands	Sydney, N.S.
Grimard, Normand	Quebec	Noranda, Que.
Gustafson Leonard J.	Saskatchewan	Macoun, Sask.
Hays, Daniel Phillip	Calgary	Calgary, Alta.
Hervieux-Payette, Céline, P.C.	Bedford	Montreal, Que.
Johnson, Janis	Winnipeg-Interlake	Winnipeg, Man.
Joyal, Serge, P.C.	Kennebec	Montreal, Que.
Kelleher, James Francis, P.C.	Ontario	Sault Ste. Marie, Ont.
Kelly, William McDonough	Port Severn	Mississauga, Ont.
Kenny, Colin	Rideau	Ottawa, Ont.
Keon, Wilbert Joseph	Ottawa	Ottawa, Ont.
Kinsella, Noël A.	New Brunswick	Fredericton, N.B.



Senator	Designation	Post Office Address
THE HONOURABLE		
Kirby, Michael	South Shore	Halifax, N.S.
Kolber, E. Leo	Victoria	Westmount, Que.
Kroft, Richard H.	Manitoba	Winnipeg, Man.
Lavoie-Roux, Thérèse	Quebec	Montreal, Que.
Lawson, Edward M.	Vancouver	Vancouver, B.C.
LeBreton, Marjory	Ontario	Manotick, Ont.
Losier-Cool, Rose-Marie	New Brunswick	Bathurst, N.B.
Lynch-Staunton, John	Grandville	Georgeville, Que.
Maheu, Shirley	Rougemont	Ville Saint-Laurent, Que.
Mahovlich, Francis William	Toronto	Toronto, Ont.
Meighen, Michael Arthur	St. Marys	Toronto, Ont.
Mercier, Léonce	Mille Isles	Saint-Élie d'Orford, Que.
Milne, Lorna	Peel County	Brampton, Ont.
Molgat, Gildas L. Speaker	Ste-Rose	Winnipeg, Man.
Moore, Wilfred P.	Stanhope St./Bluenose	Chester, N.S.
Murray, Lowell, P.C.	Pakenham	Ottawa, Ont.
Nolin, Pierre Claude	De Salaberry	Quebec, Que.
Oliver, Donald H.	Nova Scotia	Halifax, N.S.
Pearson, Landon	Ontario	Ottawa, Ontario
Pépin, Lucie	Shawinigan	Montreal, Que.
Perrault, Raymond J., P.C.	North Shore-Burnaby	North Vancouver, B.C.
Perry Poirier, Melvin	Prince Edward Island	St. Louis, P.E.I.
Pitfield, Peter Michael, P.C.	Ontario	Ottawa, Ont.
Poulin, Marie-P.	Northern Ontario	Ottawa, Ont.
Poy, Vivienne	Toronto	Toronto, Ont.
Prud'homme, Marcel, P.C.	La Salle	Montreal, Que.
Rivest, Jean-Claude	Stadacona	Quebec, Que.
Roberge, Fernand	Saurel	Ville Saint-Laurent, Que.
Robertson, Brenda Mary	Riverview	Shediac, N.B.
Robichaud, Fernand, P.C.	New Brunswick	Saint-Louis-de-Kent, N.B.
Robichaud, Louis-J., P.C.	L'Acadie-Acadia	Saint-Antoine, N.B.
Roche, Douglas James	Edmonton	Edmonton, Alta.
Rompkey, William H., P.C.	Newfoundland	North West River, Labrador
Rossiter, Eileen	Prince Edward Island	Charlottetown, P.E.I.
Ruck, Calvin Woodrow	Dartmouth	Dartmouth, N.S.
St. Germain, Gerry, P.C.	Langley-Pemberton-Whistler	Maple Ridge, B.C.
Sibbeston, Nick	Northwest Territories	Fort Simpson, N.W.T.
Simard, Jean-Maurice	Edmundston	Edmundston, N.B.
Sparrow, Herbert O.	Saskatchewan	North Battleford, Sask.
Spivak, Mira	Manitoba	Winnipeg, Man.
Stollery, Peter Alan	Bloor and Yonge	Toronto, Ont.
Stratton, Terrance R.	Red River	St. Norbert, Man.
Taylor, Nicholas William	Sturgeon	Bon Accord, Alta.
Tkachuk, David	Saskatchewan	Saskatoon, Sask.
Watt, Charlie	Inkerman	Kuujuuaq, Que.
Wiebe, John	Saskatchewan	Saskatchewan
Wilson, The Very Reverend Dr. Lois M.	Toronto	Toronto, Ont.

# SENATORS OF CANADA

## BY PROVINCE AND TERRITORY

(May 2, 2000)

**ONTARIO—24**

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Lowell Murray, P.C.	Pakenham	Ottawa
2 Peter Alan Stollery	Bloor and Yonge	Toronto
3 Peter Michael Pitfield, P.C.	Ontario	Ottawa
4 William McDonough Kelly	Port Severn	Missassauga
5 Jerahmiel S. Grafstein	Metro Toronto	Toronto
6 Anne C. Cools	Toronto-York	Toronto
7 Colin Kenny	Rideau	Ottawa
8 Norman K. Atkins	Markham	Toronto
9 Consiglio Di Nino	Ontario	Downsview
10 James Francis Kelleher, P.C.	Ontario	Sault Ste. Marie
11 John Trevor Eyton	Ontario	Caledon
12 Wilbert Joseph Keon	Ottawa	Ottawa
13 Michael Arthur Meighen	St. Marys	Toronto
14 Marjory LeBreton	Ontario	Manotick
15 Landon Pearson	Ontario	Ottawa
16 Jean-Robert Gauthier	Ottawa-Vanier	Ottawa
17 Lorna Milne	Peel County	Brampton
18 Marie-P. Poulin	Northern Ontario	Ottawa
19 The Very Reverend Dr. Lois M. Wilson	Toronto	Toronto
20 Francis William Mahovlich	Toronto	Toronto
21 Vivienne Poy	Toronto	Toronto
22 Isobel Finnerty	Ontario	Burlington
23		
24		



## SENATORS BY PROVINCE AND TERRITORY

## QUEBEC—24

Senator	Designation	Post Office Address
THE HONOURABLE		
1 E. Leo Kolber	Victoria	Westmount
2 Charlie Watt	Inkerman	Kuujuuaq
3 Pierre De Bané, P.C.	De la Vallière	Montreal
4 Michel Cogger	Lauzon	Knowlton
5 Roch Bolduc	Golfe	Sainte-Foy
6 Gérard-A. Beaudoin	Rigaud	Hull
7 John Lynch-Staunton	Grandville	Georgeville
8 Jean-Claude Rivest	Stadacona	Quebec
9 Marcel Prud'homme, P.C.	La Salle	Montreal
10 Fernand Roberge	Saurel	Ville de Saint-Laurent
11 W. David Angus	Alma	Montreal
12 Pierre Claude Nolin	De Salaberry	Quebec
13 Lise Bacon	De la Durantaye	Laval
14 Céline Hervieux-Payette, P.C.	Bedford	Montreal
15 Shirley Maheu	Rougemont	Ville de Saint-Laurent
16 Léonce Mercier	Mille Isles	Saint-Élie d'Orford
17 Lucie Pépin	Shawinigan	Montreal
18 Marisa Ferretti Barth	Repentigny	Pierrefonds
19 Serge Joyal, P.C.	Kennebec	Montreal
20 Joan Thorne Fraser	De Lorimier	Montreal
21 Aurélien Gill	Wellington	Mashteuiatsh, Pointe-Bleue
22 Sheila Finestone, P.C.	Montarville	Montreal
23		
24		

## SENATORS BY PROVINCE—MARITIME DIVISION

## NOVA SCOTIA—10

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Bernard Alasdair Graham, P.C.	The Highlands	Sydney
2 Michael Kirby	South Shore	Halifax
3 Gerald J. Comeau	Nova Scotia	Church Point
4 Donald H. Oliver	Nova Scotia	Halifax
5 John Buchanan, P.C.	Nova Scotia	Halifax
6 J. Michael Forrestall	Dartmouth and Eastern Shore	Dartmouth
7 Wilfred P. Moore	Stanhope St./Bluenose	Chester
8 Calvin Woodrow Ruck	Dartmouth	Dartmouth
9 J. Bernard Boudreau, P.C.	Nova Scotia	Halifax
10		

## NEW BRUNSWICK—10

THE HONOURABLE		
1 Louis-J. Robichaud, P.C.	L'Acadie-Acadia	Saint-Antoine
2 Eymard Georges Corbin	Grand-Sault	Grand-Sault
3 Brenda Mary Robertson	Riverview	Shediac
4 Jean-Maurice Simard	Edmundston	Edmundston
5 Noël A. Kinsella	New Brunswick	Fredericton
6 Mabel Margaret DeWare	New Brunswick	Moncton
7 Erminie Joy Cohen	New Brunswick	Saint John
8 John G. Bryden	New Brunswick	Bayfield
9 Rose-Marie Losier-Cool	New Brunswick	Bathurst
10 Fernand Robichaud, P.C.	New Brunswick	Saint-Louis-de-Kent

## PRINCE EDWARD ISLAND—4

THE HONOURABLE		
1 Eileen Rossiter	Prince Edward Island	Charlottetown
2 Catherine S. Callbeck	Prince Edward Island	Central Bedeque
3 Melvin Perry Poirier	Prince Edward Island	St. Louis
4		



## SENATORS BY PROVINCE—WESTERN DIVISION

## MANITOBA—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Gildas L. Molgat, Speaker	Ste-Rose	Winnipeg
2 Mira Spivak	Manitoba	Winnipeg
3 Janis Johnson	Winnipeg-Interlake	Winnipeg
4 Terrance R. Stratton	Red River	St. Norbert
5 Sharon Carstairs	Manitoba	Victoria Beach
6 Richard H. Kroft	Manitoba	Winnipeg

## BRITISH COLUMBIA—6

THE HONOURABLE		
1 Edward M. Lawson	Vancouver	Vancouver
2 Raymond J. Perrault, P.C.	North Shore-Burnaby	North Vancouver
3 Jack Austin, P.C.	Vancouver South	Vancouver
4 Pat Carney, P.C.	British Columbia	Vancouver
5 Gerry St. Germain, P.C.	Langley-Pemberton-Whistler	Maple Ridge
6 Ross Fitzpatrick	Okanagan-Similkameen	Kamloops

## SASKATCHEWAN—6

THE HONOURABLE		
1 Herbert O. Sparrow	Saskatchewan	North Battleford
2 Eric Arthur Berntson	Saskatchewan	Saskatoon
3 A. Raynell Andreychuk	Regina	Regina
4 Leonard J. Gustafson	Saskatchewan	Macoun
5 David Tkachuk	Saskatchewan	Saskatoon
6 John Wiebe	Saskatchewan	Saskatchewan

## ALBERTA—6

THE HONOURABLE		
1 Daniel Phillip Hays	Calgary	Calgary
2 Joyce Fairbairn, P.C.	Lethbridge	Lethbridge
3 Nicholas William Taylor	Sturgeon	Bon Accord
4 Thelma J. Chalifoux	Alberta	Morinville
5 Douglas James Roche	Edmonton	Edmonton
6 Tommy Banks	Alberta	Edmonton

## SENATORS BY PROVINCE AND TERRITORY

## NEWFOUNDLAND—6

Senator	Designation	Post Office Address
THE HONOURABLE		
1 C. William Doody	Harbour Main-Bell Island	St. John's
2 Ethel Cochrane	Newfoundland	Port-au-Port
3 William H. Rompkey, P.C.	Newfoundland	North West River, Labrador
4 Joan Cook	Newfoundland	St. John's
5 George Furey	Newfoundland	St. John's
6		

## NORTHWEST TERRITORIES—1

THE HONOURABLE		
1 Nick G. Sibbeston	Northwest Territories	Fort Simpson

## NUNAVUT—1

THE HONOURABLE		
1 Willie Adams	Nunavut	Rankin Inlet

## YUKON TERRITORY—1

THE HONOURABLE		
1 Ione Christensen	Yukon Territory	Whitehorse



DIVISIONAL SENATORS

Senator	Designation	Post Office Address
THE HONOURABLE		
1 Normand Grimard .....	Quebec .....	Noranda, Que.
2 Thérèse Lavoie-Roux .....	Quebec .....	Montreal, Que.

## ALPHABETICAL LIST OF STANDING, SPECIAL AND JOINT COMMITTEES

(As of May 2, 2000)

\*Ex Officio Member

### ABORIGINAL PEOPLES

**Chair:** Honourable Senator Austin  
**Honourable Senators:**

Andreychuk,	Chalifoux,
Austin,	Christensen,
*Boudreau, (or Hays)	DeWare, Gill,

**Deputy Chair:** Honourable Senator St. Germain

*Lynch-Staunton, (or Kinsella)	Sibbeston, St. Germain,
Nolin, Pearson,	Watt.

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Austin, Beaudoin, \*Boudreau (or Hays), Chalifoux, Christensen, Comeau, DeWare, Gill, Johnson  
\*Lynch-Staunton (or Kinsella), Pearson, Sibbeston, Watt.*

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### AGRICULTURE AND FORESTRY

**Chair:** Honourable Senator Gustafson  
**Honourable Senators:**

Banks,	Gill,
*Boudreau, (or Hays)	Gustafson, *Lynch-Staunton, (or Kinsella)
Chalifoux,	
Fairbairn,	

**Deputy Chair:** Honourable Senator Fairbairn

Oliver, Robichaud, (Saint-Louis-de-Kent)	St. Germain, Stratton, Wiebe.
Rossiter, Sparrow,	

*Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Chalifoux, Fairbairn, Fitzpatrick, Ferretti Barth, Gill, Gustafson, \*Lynch-Staunton (or Kinsella),  
Oliver, Robichaud (Saint-Louis-de-Kent), Sparrow, Spivak, St. Germain, Stratton.*

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### THE SUBCOMMITTEE ON FORESTRY

(Agriculture and Forestry)

**Chair:** Honourable Senator Fitzpatrick  
**Honourable Senators:**

*Boudreau, (or Hays)	Fitzpatrick, Gill,
Fairbairn,	

**Deputy Chair:** Honourable Senator St. Germain

*Lynch-Staunton, (or Kinsella)	St. Germain, Stratton.
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**BANKING, TRADE AND COMMERCE**

**Chair:** Honourable Senator Kolber  
**Honourable Senators:**

Angus,	Furey,
*Boudreau (or Hays)	Hervieux-Payette,
Fitzpatrick,	Kelleher,
	Kenny,

**Deputy Chair:** Honourable Senator Tkachuk

Kolber,	Meighen,
Kroft,	Oliver,
*Lynch-Staunton, (or Kinsella)	Tkachuk,

*Original Members as nominated by the Committee of Selection*

Angus, \*Boudreau (or Hays), Fitzpatrick, Furey, Hervieux-Payette, Joyal, Kelleher, Kenny, Kolber,  
 \*Lynch-Staunton (or Kinsella), Meighen, Oliver, Tkachuk.

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**ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES**

**Chair:** Honourable Senator Spivak  
**Honourable Senators:**

Adams,	Christensen,
*Boudreau, (or Hays)	Cochrane,
Buchanan,	Eyton,
Chalifoux,	Finnerty,

**Deputy Chair:** Honourable Senator Taylor

Kelleher,	Spivak,
Kenny,	Taylor,
*Lynch-Staunton, (or Kinsella)	
Sibbeston,	

*Original Members as nominated by the Committee of Selection*

Adams, \*Boudreau (or Hays), Buchanan, Chalifoux, Christensen, Cochrane, Eyton, Furey,  
 Kenny, \*Lynch-Staunton (or Kinsella), Sibbeston, Spivak, St. Germain, Taylor.

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**FISHERIES**

**Chair:** Honourable Senator Comeau  
**Honourable Senators:**

*Boudreau, (or Hays)	Cook,
Carney	Furey,
Comeau,	Johnson,
	*Lynch-Staunton, (or Kinsella)

**Deputy Chair:** Honourable Senator Perrault

Mahovlich,	Perry,
Meighen,	Robertson,
Perrault,	Robichaud, (Saint-Louis-de-Kent)
	Watt,

*Original Members as nominated by the Committee of Selection*

\*Boudreau (or Hays), Carney, Comeau, Cook, Doody, Furey, \*Lynch-Staunton (or Kinsella), Mahovlich,  
 Meighen, Murray, Perrault, Perry, Robichaud (Saint-Louis-de-Kent), Watt.

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## FOREIGN AFFAIRS

<b>Chair:</b>	<b>Honourable Senator Stollery</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Andreychuk</b>
<b>Honourable Senators:</b>			
Andreychuk.	Carney.	Di Nino.	Pearson.
Atkins.	Corbin.	Grafstein.	Stollery.
Bolduc.	De Bané.	*Lynch-Staunton, (or Kinsella)	Taylor.
*Boudreau. (or Hays)			

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Atkins, Bolduc, \*Boudreau (or Hays), Corbin, Carney, De Bané, Di Nino, Grafstein, Lewis, Losier-Cool, \*Lynch-Staunton (or Kinsella), Stewart, Stollery.*

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

<b>Chair:</b>	<b>Honourable Senator Rompkey</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Nolin</b>
<b>Honourable Senators:</b>			
*Boudreau (or Hays)	DeWare.	*Lynch-Staunton, (or Kinsella)	Poulin.
Cohen.	Forrestall.	Maheu.	Robichaud, (Saint-Louis-de-Kent)
Comeau.	Kelly.	Milne.	Rompkey.
De Bané.	Kenny.	Nolin.	Stollery.
	Kroft.		

*Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Cohen, De Bané, DeWare, Forrestall, Kelly, Kenny, Kroft, \*Lynch-Staunton (or Kinsella), Maheu, Milne, Nolin, Poulin, Robichaud (Saint-Louis-de-Kent), Rompkey, Rossiter, Stollery.*

## LEGAL AND CONSTITUTIONAL AFFAIRS

<b>Chair:</b>	<b>Honourable Senator Milne</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Beaudoin</b>
<b>Honourable Senators:</b>			
Andreychuk.	Cools.	*Lynch-Staunton, (or Kinsella)	Moore.
Beaudoin.	Fraser.	Mahovlich.	Murray.
Buchanan.	Joyal.	Milne.	Nolin.
*Boudreau (or Hays).			Pearson.

*Original Members as nominated by the Committee of Selection*

*Andreychuk, Beaudoin, \*Boudreau (or Hays), Cools, Fraser, Ghitter, Joyal, Kelleher, \*Lynch-Staunton (or Kinsella), Milne, Moore, Nolin, Pearson, Poy.*



## LIBRARY OF PARLIAMENT (Joint)

**Joint Chair:** Honourable Senator Louis Robichaud  
**Honourable Senators:**

Atkins, Grafstein,  
 Finnerty, Grimard,

**Deputy Chair:**

Poy, Robichaud,  
 (L'Acadie-Acadia)  
 Ruck.

*Original Members agreed to by Motion of the Senate*  
 Atkins, Finnerty, Grafstein, Poy, Robichaud (L'Acadie-Acadia), Ruck.

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## NATIONAL FINANCE

**Chair:** Honourable Senator Murray  
**Honourable Senators:**

Bolduc, Doody,  
 \*Boudreau, Finestone,  
 (or Hays) Finnerty,  
 Cools, Ferretti Barth,

**Deputy Chair:** Honourable Senator Cools

Kinsella, Moore,  
 \*Lynch-Staunton, Murray,  
 (or Kinsella) Stratton,  
 Mahovlich,

*Original Members as nominated by the Committee of Selection*  
 Bolduc, \*Boudreau (or Hays), Cools, Finestone, Finnerty, Ferretti Barth, Kinsella,  
 \*Lynch-Staunton (or Kinsella), Mahovlich, Moore, Murray, Perry, Stratton.

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## OFFICIAL LANGUAGES (Joint)

**Joint Chair:** Honourable Senator Losier-Cool  
**Honourable Senators:**

Beaudoin, Gauthier,  
 Fraser,

**Deputy Chair:**

Losier-Cool, Rivest,  
 Robichaud,  
 (L'Acadie-Acadia)

*Original Members agreed to by Motion of the Senate*  
 Beaudoin, Fraser, Gauthier, Losier-Cool, Meighen, Pépin, Rivest, Robichaud (L'Acadie-Acadia).

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### PRIVILEGES, STANDING RULES AND ORDERS

**Chair:** Honourable Senator Austin  
**Honourable Senators:**

Austin.	DeWare.
Beaudoin.	Di Nino.
*Boudreau. (or Hays)	Gauthier.
Corbin.	Grafstein.
	Grimard.

**Deputy Chair:** Honourable Senator Grimard

Joyal.	*Lynch-Staunton. (or Kinsella)
Kelly.	Robichaud. (L'Acadie-Acadia).
Kroft.	
Losier-Cool.	Rossiter.

*Original Members as nominated by the Committee of Selection*

*Austin, Bacon, Beaudoin, \*Boudreau (or Hays), DeWare, Gauthier, Ghitter, Grafstein, Grimard, Joyal, Kelly, Kroft, \*Lynch-Staunton (or Kinsella), Maheu, Pépin, Robichaud (L'Acadie-Acadia), Rossiter.*

---

### SCRUTINY OF REGULATIONS (Joint)

**Joint Chair:** Honourable Senator Hervieux-Payette  
**Honourable Senators:**

Cochrane.	Grimard.
Finestone.	

**Deputy Chair:**

Hervieux-Payette.	Moore.
	Rivest.

*Original Members as nominated by the Committee of Selection*

*Cochrane, Finestone, Furey, Grimard, Hervieux-Payette, Moore, Perry, Rivest.*

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### SELECTION

**Chair:** Honourable Senator Mercier  
**Honourable Senators:**

Atkins.	DeWare.
Austin.	Fairbairn.
*Boudreau. (or Hays)	Grafstein.

**Deputy Chair:**

Kinsella.	Mercier.
Kirby.	Murray.
*Lynch-Staunton. (or Kinsella)	

*Original Members agreed to by Motion of the Senate*

*Atkins, Austin, \*Boudreau (or Hays), DeWare, Fairbairn, Grafstein, Kinsella, Kirby, \*Lynch-Staunton or (Kinsella), Mercier, Murray.*

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SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

<b>Chair:</b>	<b>Honourable Senator Kirby</b>	<b>Deputy Chair:</b>	<b>Honourable Senator LeBreton</b>
<b>Honourable Senators:</b>			
Beaudoin,	Carstairs,	Fairbairn,	*Lynch-Staunton,
*Boudreau,	Cohen,	Keon,	(or Kinsella)
(or Hays)	Cook,	Kirby,	Milne,
Callbeck,	Corbin,	LeBreton,	Roberston.

*Original Members as nominated by the Committee of Selection*

*\*Boudreau (or Hays), Callbeck, Carstairs, Cohen, Cook, Di Nino, Fairbairn, Gill, Kirby, Lavoie-Roux, LeBreton, \*Lynch-Staunton (or Kinsella), Pépin, Robertson.*

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THE SUBCOMMITTEE TO UPDATE “OF LIFE AND DEATH”  
(Social Affairs, Science and Technology)

<b>Chair:</b>	<b>Honourable Senator Carstairs</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Beaudoin</b>
<b>Honourable Senators:</b>			
Beaudoin,	Carstairs,	Keon,	Milne,
*Boudreau,	Corbin,	*Lynch-Staunton,	
(or Hays)		(or Kinsella)	

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TRANSPORT AND COMMUNICATIONS

<b>Chair:</b>	<b>Honourable Senator Bacon</b>	<b>Deputy Chair:</b>	<b>Honourable Senator Forrestall</b>
<b>Honourable Senators:</b>			
Adams,	De Bané,	Johnson,	Poulin,
Bacon,	Finestone,	*Lynch-Staunton,	Roberge,
*Boudreau,	Forrestall,	(or Kinsella)	Spivak,
(or Hays)	Furey,	Perrault,	

*Original Members as nominated by the Committee of Selection*

*Adams, Bacon, \*Boudreau (or Hays), Callbeck, Finestone, Forrestall, Johnson, Kirby, LeBreton, \*Lynch-Staunton (or Kinsella), Perrault, Poulin, Roberge, Spivak.*

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**THE SUBCOMMITTEE ON COMMUNICATIONS**  
(Transport and Communications)

**Chair:** Honourable Senator Poulin

**Deputy Chair:** Honourable Senator Spivak

**Honourable Senators:**

\*Boudreau,  
(or Hays)

Johnson,  
Kirby.

\*Lynch-Staunton,  
(or Kinsella)  
Maheu.

Poulin.  
Spivak.

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CANADA

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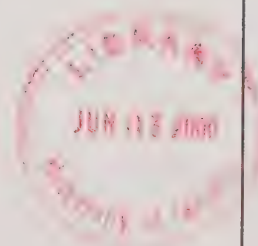
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OFFICIAL REPORT  
(HANSARD)

Wednesday, May 3, 2000

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THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE*



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## THE SENATE

Wednesday, May 3, 2000

The Senate met at 1:30 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### IN RECOGNITION OF NAVAL FORCES

**Hon. Shirley Maheu:** Honourable senators, as we approach the fifty-fifth anniversary of VE Day, I should like to read to you a poem written by Jack F. King, RCNVR, UNTD, RCN Reserve, in April and October of 1999. It is called *A Naval Remembrance*.

They came from the wheat fields,  
The forests, the towns,  
Great cities and mountains,  
Some were of renown.  
Many were mere youth  
Most all of them young,  
The eager, the scared  
Knew not what they dared.  
They withstood every hardship  
Long gut-wrenching days,  
Lonely vigils on watch,  
They proved that they cared.

Overworked, overtired,  
Midst sweat, tears and toil,  
And oft when torpedoed  
Were covered in oil.  
Unable to shower —  
Subs nearby did hover;  
Storms, ice and fog,  
Encompassing fear  
Of collisions so near;  
Messdecks sloshing  
With sea, spew and gear;  
Homesick and seasick  
They still sallied forth  
These young men, Canadian,  
At sea proved their worth.

Their equipment not modern  
Their ships lacking, too,  
Their "on-the-job training"  
Pushed most convoys through.  
Some shipmates were lost  
By the wrath of the sea,  
By the bombs and torpedoes  
Of a harsh enemy.

"Wary Navy" most were,  
R.C.N. lads in blue —  
100,000 and Wrens  
And Merchant Navy, not few;  
They all toiled together  
Like good ship's crews do  
In "sweepers" and "four-stackers",  
Corvettes, frigates, too,  
Destroyers and launchers,  
Cruisers, carriers — not new.  
Through frustration, despair  
The Canadian Navy yet grew  
Midst turmoil and terror  
To a multitude from a few.  
To 400 ships in our Navy,  
400 Merchant Ships, too.

The East and the West,  
They gave of their best;  
These sea-faring sailors —  
the R.C.N.V.R., R.C.N.,  
Merchant Navy and the Wrens.

Tomorrow, honourable senators, I shall bring forward a liberal translation from a member of what used to be my riding.

### ONTARIO

#### CONGRATULATIONS ON BUDGET

**Hon. Gerry St. Germain:** Honourable senators, I am honoured to rise in my place today so that I might give praise where praise is due. Yesterday afternoon, and I am sure all senators saw the event on their evening news reports, the Government of Ontario stood up to be counted. Minister of Finance Ernie Eves announced the results of the 1999 fiscal year and the budget for the years 2000-2001. To tremendous applause of course, he announced the first back-to-back balanced budget for the Province of Ontario, a feat so impressive for Ontario that officials were hard pressed to accurately determine when it was last done. They seem to have determined that it has not been done since 1914.

Honourable senators, I learned in business that nothing happens in life until someone does something or until someone sells something. All reasonable people immediately understand that the successes of Alberta and Ontario are because of the results of hard-working people in both business and public office. When governments spend more than they take in, obvious changes must be made in the way things are done.

Ontario's economy has been transformed beyond recognition in the past decade, thanks to the "stand up and be counted" efforts of the workers of the great Conservative Alliance across Canada and to people with visions of what this country can be. If Ontario can point to only one reason why the economy is booming, it can only point to the Mulroney government's introduction of free trade.

• (1340)

Brian Mulroney used to say, and I heard him many a time, that "the best social program in the country is a job." The Ontario and federal governments today are reaping the results of the hard work of the previous federal Conservative government. Canadians tell me every day that they want another leader with the vision and intestinal fortitude to do the job, to stand up and be counted.

Honourable senators, I look forward to more Conservative leaders taking the helm of Canada's ship and steering us further down the road to greater prosperity.

[Translation]

## NOVA SCOTIA

### MISAPPROPRIATION OF FUNDS FOR FRENCH-LANGUAGE TRAINING

**Hon. Eymard G. Corbin:** Honourable senators, on Friday, April 28, Nova Scotia's education minister told that province's House of Assembly that his department used federal funding earmarked for French-language education for other purposes. This was something some of us had suspected for a long time, thinking of the funding programs in my own province of New Brunswick, for instance. For a provincial minister to make such an admission is quite something. It is scandalous in more than one regard. This province is not the only one to pull a fast one with federal funding intended for specific programs and projects.

This must stop. It is not only unfair, it is dishonest. It also deprives the student population of the services it is entitled to expect from its government.

As a French Canadian and a federalist who wants to see this country run the way it should, I am outraged at this state of affairs and I call on the federal government to take the necessary action to correct this regrettable practice as quickly as possible.

I also think it is up to the Auditor General of Canada to promptly look into the use made of funds earmarked for education and other programs and report to Parliament on the extent of the practice, not just in the Province of Nova Scotia, but in other jurisdictions as well.

[English]

## NATIONAL DEFENCE

### STATEMENT BY FORMER SEA KING PILOTS AND ENGINEER ON AIRWORTHINESS OF AIRCRAFT

**Hon. J. Michael Forrestall:** Honourable senators, I should like to read to you the following document. It is self-explanatory.

The following statement is declared by three retired Sea King pilots who have all held senior leadership positions in the Maritime Helicopter community, and a retired Aerospace Engineer who has held senior positions responsible for Sea King airworthiness.

Colonels Cody and Myrhaugen and Brigadier-General Curleigh have collectively flown over 10,000 hours in the Sea King helicopter (many of them at sea flying from naval ships), each have served in at least four Sea King squadrons, all three have been Commanding Officers of operational Sea King squadrons, and all three went on to assume senior leadership positions such as Commander of 12 Wing Shearwater, home base of Canada's Sea Kings, Deputy Commander of Maritime Air Group (MAG), responsible for all Canadian Sea King operations, and Commander of the MAG. Colonel Murphy has been involved in Sea King support since 1966 and during that time held positions such as the Rotary Wing Engineer at Shearwater, the Senior Staff Officer Engineering and Maintenance at the MAG, and the responsibility for Sea King airworthiness at NDHQ here in Ottawa.

What we have to declare was not arrived at lightly. At a meeting on May 1 with four other senior retired officers who are members of Friends of Maritime Aviation, we reviewed the current Sea King situation. Included in our examination were recent after-deployment and incident reports which were obtained by the media through access to information, and which included concerns expressed by some of those who are flying Sea Kings today.

Our review and analysis led us to the conclusion that we must now state publicly and categorically that in our experienced view, the stage has been reached where we are fast approaching a critical point that will put continued Sea King operations at great risk.

Not to mention the lives of the men and women who fly them.

To keep this declaration as short as possible, we will amplify the above statement in a separate document. Until today, the FOMA has deliberately avoided the temptation of using "safety" as a scare tactic to prod the government to replace our unreliable and operationally limited Sea Kings. We focused on the many other valid reasons to take prompt action on this matter. However, as stated above, we now believe the elastic band has been stretched as far as it can go. When it snaps catastrophically, the blame will be rightly placed on the head of the one man who is holding up initiation of the new Maritime Helicopter Project. We hope you are listening, Mr. Prime Minister.



## NEW BRUNSWICK

### SCHOOL SYSTEM—UPDATE ON MAKING WAVES PROGRAM

**Hon. Erminie J. Cohen:** Honourable senators, we have all watched with horror and disbelief the insidious rise of violence in our middle and high school populations, and our collective voice cries out: What can we do?

I rise today to update you on "Making Waves," a program that I introduced in this chamber three years ago and continue to proudly endorse. It was designed to give high school students in New Brunswick basic information on dating violence, abusive relationships, the impact of gender and media stereotypes on their choices and actions, and the ability to recognize the warning signs and avoid becoming a victim.

This innovative program educates and trains students to raise awareness and provides them with skills for identifying and resisting negative behaviour from their peers. It has been very successful. It was endorsed by the National Crime Prevention Council as "a model for crime prevention among young people."

A study conducted in New Brunswick schools by the Muriel McQueen Fergusson Centre for Family Violence Research has shown that among students surveyed in Grades 7, 9, and 11, some 22 per cent of girls and some 12 per cent of boys had already experienced psychologically and physically abusive dating experiences. It is particularly disheartening to note that abusive dating experiences have already begun by Grade 7. While this study was conducted in New Brunswick, I believe other provinces would see similar figures if they were to conduct their own research.

Speaking to victims of abuse has shown that it does not begin as an adult or after marriage. For many, the violence begins when they are dating. It has been proven that the sooner violent behaviour is recognized, the better the chance there is of breaking the cycle of abuse. The key is to be able to identify certain behaviours early, before they become more serious and before the physical or sexual abuse starts.

"Making Waves" is designed to allow each school to adapt their program to local needs, which helps identify and eliminate problems before they start or become too serious. This initiative is touted as one of the best of its kind in Canada and should serve as a model for similar programs across the country.

Tomorrow morning, the founders of "Making Waves" and two student participants will be in the Reading Room to present their unique program and its impact on New Brunswick youth. This is the type of project that deserves federal funding. Many times, people who are involved in these projects spend half of their physical and emotional time raising the funds, when they could be delivering the service more effectively. This program is important because it deals with the root of the problem, rather than attempting to undo damage already done.

Honourable senators, I wish to thank my colleague Senator Carstairs, who graciously agreed to co-host this event with me. We both welcome the opportunity to give visibility to this

creative and effective program at breakfast tomorrow morning in our Reading Room at 7:45 a.m.

## VISITORS IN THE GALLERY

**The Hon. the Speaker *pro tempore*:** Honourable senators, I wish to draw your attention to visitors in our gallery today. They are members of Canada's reserve force from the army, navy and rangers who are here to commemorate Reserve Force Uniform Day, May 3, 2000.

[Translation]

Reservists are Canadian citizens from all walks of life who devote some of their time to military service. They are professionals, students, public servants, labourers, entrepreneurs and university students.

On behalf of all honourable senators, I welcome you to the Senate of Canada.

[English]

• (1350)

## ROUTINE PROCEEDINGS

### STATE OF DOMESTIC AND INTERNATIONAL FINANCIAL SYSTEM

#### INTERIM REPORT OF BANKING, TRADE AND COMMERCE COMMITTEE ON STUDY TABLED

**Hon. E. Leo Kolber:** Honourable senators, I have the honour to table the fifth report of the Standing Senate Committee on Banking, Trade and Commerce, entitled "The Taxation of Capital Gains."

I must add, however, that I am somewhat embarrassed to say that a copy of this report seems to have found its way into the hands of a major daily newspaper and an article about the committee report appeared this morning. As honourable senators know, a recent report of the Committee on Privileges, Standing Rules and Orders dealt with the issue of confidentiality of our reports. I look forward to consideration of that report and finding a way to stop these totally unacceptable leaks.

Honourable senators, pursuant to rule 97(3), I move that the report be placed on the Orders of the Day for consideration at the next sitting of the Senate.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## QUESTION PERIOD

### AGRICULTURE AND AGRI-FOOD

#### FARM CRISIS IN PRAIRIE PROVINCES—EFFECT OF RISING PRICES FOR FUEL AND TRANSPORTATION ON AID TO GRAIN FARMERS

**Hon. Leonard J. Gustafson:** Honourable senators, I have a question for the Leader of the Government in the Senate. For two years, we have heard about the farm crisis, especially on the Prairies. However, the farm crisis is not only happening on the Prairies. I understand that because commodity prices have decreased by half, Ontario farmers who are specifically grain producers are suffering severely, as well as farmers in Saskatchewan, Manitoba, Alberta, Quebec, and wherever there is dependence on commodity prices.

Honourable senators, we have heard this for two years. Farm crisis groups have been established. Yesterday, the farmers received some welcome support from Adrienne Clarkson, the Governor General of Canada. The following was reported in today's *Leader Post*:

In an interview with the *Leader Post* Tuesday afternoon, Clarkson said she was distressed to hear from so many young people who feel they have no choice but to leave their family farm and move out of the province.

"That is a dramatic change which will have a lot of reverberations right through all of Saskatchewan's social fabric."

Clarkson believes the plight of Saskatchewan farmers isn't well understood by other Canadians...

The Governor General recognizes that we have a national problem here.

One might say, "Well, the government has provided money." However, the railroads have just increased the price for the freight of grain by 4.5 per cent. That will take away from any support funding that has been provided by the government thus far. The increase in fuel prices will use up some of the aid given to the farmers. Does the government recognize the situation facing grain producers, and the fact that the outcome will have an impact on the whole structure of Canada?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for raising this issue once again. Obviously, I am well aware of his concern in this area, as are other members of the government because I have communicated that concern on a regular basis.

Commodity prices continue to be very difficult and the reasons for those commodity prices, as the honourable senators knows far better than I, depend on a myriad of factors. These factors

include everything from weather, to government subsidies, to transportation and all sorts of related matters.

The government has responded and I will not go through the programs introduced and the measures taken. However, the honourable senator has acknowledged that the federal government's response was welcomed by the premiers of Manitoba and Saskatchewan, the two provincial governments most directly affected.

The honourable senator also brought to my attention the situation with the Farm Credit Corporation and the concern that many farmers might well be facing the immediate crisis of loss of property. I have had an opportunity to seek out some of that information, and I will be giving Honourable Senator Gustafson a written copy of it.

Honourable senators, I do not intend to diminish the situation, but some of the information that I received was of some comfort. For example, the indication is that Farm Credit Corporation customers are managing to make their payments despite the commodity price downturn. As of the end of March, 2000, which was FCC's year-end, nationally 95 per cent of the accounts were up-to-date, and in Saskatchewan the rate is slightly less with 93 per cent of the accounts being up to date.

Also, it has been indicated that the arrears level has not yet shown a large increase, although admittedly there is a rising trend. For example, in Saskatchewan, at the end of March, 2000, there were 674 customers in arrears compared to 552 at the same time last year. There was an increase, but it did not appear to be a catastrophic increase. In Manitoba there were 159 customers in arrears at that point in time, compared to 142 at the same time last year.

I have received assurances from the Farm Credit Corporation that they will continue to monitor amount of the arrears and the number of accounts. I have also been assured that they will continue ongoing discussions with the federal Minister of Agriculture and the two provincial ministers.

#### FARM CRISIS IN PRAIRIE PROVINCES— LEVEL OF GOVERNMENT SUBSIDIES

**Hon. Leonard J. Gustafson:** Honourable senators, the minister mentions the fact that farmers have received money. When the premiers were here and met with the Prime Minister, monies were made available. They are receiving the funds right now, so I know exactly what they are getting. The most that the big farmers could possibly receive is \$7,500, but the average farmer is receiving approximately \$3,000. As I said before, that will not even take care of the price in the increase of fuel for a couple of months.

• (1400)

In terms of farm subsidies, my house leader handed to me a report out of the *New York Times* stating that Congress has agreed to \$7.1 billion in farm aid.



The Americans are recognizing that they have a major national issue. Canada does not seem to recognize the same condition here. Solving this problem will take some real money, not just be a little help here or a little help there. Agriculture is facing a serious problem.

This *Times* article of April 14 goes on to say that farm subsidies were supposed to end, but that is not the case. The Government of Canada must understand that if it holds back and does not do what should be done, the Americans will take over this country.

Do honourable senators know how much money it takes to buy a quarter section of land in Saskatchewan right now with American money? With \$20,000 of U.S. money, one can buy a quarter section of land — 160 acres. German companies are buying up land all across Manitoba.

The big question is whether the government will come to grips with a serious approach. I am suggesting that it will take a couple of billion dollars per year. The government boasts of a surplus. Is the government willing to use some of that surplus to save one of the most important industries in this country — agriculture?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, "how much is enough" is always an issue in any government program or effort. No matter what the contribution, some will indicate — and in most cases rightfully so — that more should be done, and more funds should be committed. That is true of farm assistance, but it is also true in any number of other areas. It is a fact of government that we must live within limited resources. For example, we will never be able to match the subsidies offered by the United States or by the European Community. I do not think the honourable senator nor anyone else would suggest that we try to do that.

The premiers of Manitoba and Saskatchewan came to Ottawa to negotiate an agreement for assistance that would be real and meaningful and that would make an impact in their provinces. When the arrangement was complete, the premiers indicated that they believed they had been successful in that attempt.

Is the assistance enough? I accept the opinion and the view of the senator that it is not, but I can say that the actions taken by the government to date have been substantial. Ultimately, as he and I know, the long-term solution is to reduce and eliminate subsidies by all countries and to allow our farmers to compete on a level playing field. Obviously, our farmers are much more efficient than the world competition.

**Senator Gustafson:** Honourable senators, what if the farmers are no longer there? Bankruptcies are the order of the day. One of my neighbours went bankrupt a few days ago. I attended a sale held by a farmer who was selling out his machinery because he quit farming. His combine was a fairly good one, but it sold for \$5,000. We do not hear about most of those cases.

These things are happening. I would be the last one to cry. It is demoralizing to have to do this, but we must place before the Senate and the country the importance of this industry.

I ask again: Will the minister carry to the cabinet the important decisions that must be taken to make agriculture thrive and work in Canada?

I should like to ask another question. Subsidies may go on forever, but this situation in agriculture is beyond subsidies. The railroads can increase their freight rate by 4.5 per cent. The money that the farmers get from the food chain right now is 0.07 per cent on their investment, according to the Farmers Union. Some of the processing companies are getting up to 30 per cent return on their investment. The machine companies are getting between 18 per cent and 25 per cent return on their investment. Why can farmers not get a reasonable price for their commodities? We supposedly get 6 cents on a loaf of bread. Canada must deal with this problem or we are gone.

**Senator Boudreau:** Honourable senators, as I have said in the past, I agree without hesitation and will continue to bring these concerns and this issue to my colleagues in the government. I shall also continue to monitor the credit situation with Farm Credit Corporation on a periodic basis to ensure that the federal minister, the provincial ministers and the corporation maintain an up-to-date picture of what is happening in the farm community with respect to credit and any financial crisis that may occur. I give that undertaking to the honourable senator without hesitation.

#### FARM CRISIS IN PRAIRIE PROVINCES— FLEXIBILITY OF AID PROGRAMS—GOVERNMENT INITIATIVES ON INTERNATIONAL SUBSIDY ISSUE

**Hon. A. Raynell Andreychuk:** Honourable senators, I rise on a supplementary question. The answers of the minister bothered me in two ways. He said that the Farm Credit Corporation report that 93 per cent of farmers have complied with loan repayment. It seems to be a response about the majority. If the majority are complying, then everything is okay. My concern is for that 7 per cent who could not repay their loans. They probably did not have a relative with extra money. They probably did not have extra equipment or extra land.

We are talking about the poorest of the poor in this country — the poor farmer who has no alternative; the farmer who probably grew up on a Saskatchewan farm, who knows nothing else, and who did not take the education needed to make alternative choices because there was a future in farming back then.

Honourable senators, we are not losing just one farmer. We are losing a family. We are losing a resource in rural Saskatchewan. Does that not count? Should there not be rules in the farm credit system to help the most needy? Why are we working on percentage, saying that if 93 per cent can pay, then everything okay? Many of those who did pay had difficulty doing so. Many are in a totally destitute position. That does not mean they are bad farmers. It means that they do not have the extra means.



Honourable senators have heard the figures from Senator Gustafson. People cannot make money farming these days. They are trying to wait for a turnaround. Surely, the government has a responsibility here. Surely, the Farm Credit Corporation should take that into account. There is no stretching their rules now. Will the government put some stretch in those rules to take into account some of these situations?

I have a second question. The government continues to say that the problem in agriculture is due in part to the need for provinces to do more, but, more particularly, it is caused by the subsidy issue around the world. What is the government's plan to tackle the subsidy issue?

The minister went to the WTO and said that we would specifically tackle the subsidy issue. The Europeans said they would deplete and reduce their subsidies but not until three years hence. They have a three-year cushion with which to prop up their farmers. We have heard what the Americans are doing, but what is our international strategy? What is the foreign policy initiative to attack the subsidy issue? There is no ingenious Cairns Group initiative like we had a number of years ago. There is no new initiative. What is the government doing on the subsidy issue internationally?

• (1410)

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, there were two questions, and I shall attempt to answer both. With respect to the question of the percentage of farmers who appear to be in some credit difficulty, if there is even one farming family that cannot meet their financial obligations and faces an extreme credit problem, then that is serious. It is especially serious for that particular family. I used to say that if the unemployment rate was only one person and you happened to be that person who was unemployed, then you would take no comfort in the fact that the unemployment rate was low. I am not minimizing that situation when I say that the concern was raised that a high percentage of people on farm credit were facing such a crisis. I do not know that any loan program, administered by either the government or by the private sector, would have 100 per cent of its borrowers up to date at any given time. If you went to the Bank of Nova Scotia across the street and asked to see their loan portfolio, it would be considered fairly normal that a certain percentage of people were in arrears. This situation does not seem to be dramatically different from that type of situation. However, for an individual farm family that is facing this difficulty, it is an extremely serious situation.

The overall numbers are helpful in terms of looking at the scope of the problem. I will convey the honourable senator's concerns and views. I already have the assurance of senior officials at the Farm Credit Corporation that they will continue to monitor the situation and will continue discussions with the relevant ministers.

The honourable senator also asked: What are we doing with respect to the World Trade Organization and our efforts there? The Canadian position has been clear, and on every occasion, the

minister puts our position forward as forcefully as possible. It is not an easy task. Obviously, it is not something on which, we will be successful in one stroke overnight. Admittedly, this involves a long, ongoing process. From my discussions with the minister, I am confident that he is serious in his efforts and takes every opportunity to put Canada's case forward.

**Senator Andreychuk:** Would the minister be able to table the government's strategy on subsidies with respect to the WTO, rather than simply stating, "We will pursue"? I have not been able to get my hands on a document that outlines the strategy. It is extremely important to at least give farmers the feedback that something is being done. If the minister will give that undertaking, then I will return to the farm credit issue.

Honourable senators, there are no inefficient farmers left in Saskatchewan. They left many years ago. Senator Gustafson can give you all the statistics. We are not talking about a number of defaulters as you might in a bank or in another institution. We are talking about what used to be efficient farmers, who find themselves in a crisis that is not of their own making. They have exhausted their own resources and any other resources available to them. It is small comfort to know that other people can rely on relatives. I know of families who have taken out mortgages on their city property to pay off some relative's farm loans. That is cold comfort to the person who has neither a relative nor the means. That is why I am saying that this is hurting the poorest of the poor. Talk to those families and to their children. That is the issue here. At this point it is not a statistical thing, it is a humanitarian issue.

**Senator Boudreau:** Honourable senators, I do not want to repeat my comments with respect to that issue. The information that I have does not give any indication of how serious those arrears are, it only contains an overall category of farmers in arrears. However, I do not think they are in arrears due to any shortcomings of their own. Obviously, it is a situation that has developed. If there is one farmer or one farming family in that circumstance, then we should all be concerned. I merely brought the numbers here to give honourable senators an overall picture of the circumstance at a given point in time, which was March 31 of this year. At that time, 95 per cent of the farmers across the country were not in arrears; everything was up-to-date. I do not think we should make more or less of that statistic, and I do not purport to do that.

With respect to the increased detail that the honourable senator has requested, I will certainly pass on that request and supply whatever detail I can get.

#### LOW RATE OF RETURN TO PRODUCERS—GOVERNMENT RESPONSE

**Hon. Mira Spivak:** Honourable senators, I rise on a supplementary question. There is another piece of information apart from the government strategy on the subsidies question. One former colleague and one colleague on the government side of the House, namely, Mr. Dennis Mills and Mr. Ralph Ferguson, have commented on the fact that there is not a fair share for producers. Senator Gustafson has just outlined how unfair the situation is, and Dennis Mills has put forward a proposal.

I should like to know the government's policy with regard to ensuring that the obscene gap is narrowed between what the processors and everyone else receives compared to the producer, who is seeing a negative return and is being squeezed.

The government can look upon this situation with equanimity. In the past, we have had wage and price controls and all sorts of things. I am not advocating wage and price controls, but I am suggesting that an economic structure that allows everyone in an industry to make tremendous profit while producers are making a negative profit and are in a desperate situation should not be countenanced. What is the government's plan to address this particular shortcoming in the pricing structure of the industry?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am not familiar with the particular plan that the honourable senator mentions. If Mr. Mills has proposed a detailed plan to deal with this situation, I would certainly be interested in reading to what extent he would interfere with the normal market forces in this case.

I would be happy to ask the Minister of Agriculture what initiatives, if any, are under consideration in this area. I would certainly be happy to receive, from either the honourable senator or her caucus, any suggestions concerning what useful action might be considered and to pass along any specific recommendations.

**Senator Spivak:** Honourable senators, has the Honourable Leader of the Government in the Senate read the documents that Ralph Ferguson and Dennis Mills have put forward?

**Senator Boudreau:** No, I have not read those documents.

**Senator Spivak:** The leader might try that to begin with.

## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS—STATEMENT BY FORMER SEA KING PILOTS AND ENGINEER ON AIRWORTHINESS OF AIRCRAFT

**Hon. J. Michael Forrestall:** Honourable senators, my question is for the Leader of the Government in the Senate. Yesterday, I reviewed and put on the record the incident summary on Talon41. A few moments ago, I read to you a declaration of concern by four of the most respected men in the Sea King community in Canada. They have said:

...we now believe the elastic band has been stretched as far as it can go. When it snaps catastrophically, the blame will be rightly placed on the head of the one man who is holding up initiation of the new Maritime Helicopter Project. We hope you are listening, Mr. Prime Minister.

Will the minister go to the Prime Minister this afternoon and ask him to initiate the Maritime helicopter program before we have a serious tragedy, yes or no?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I must answer the question a little more thoroughly than with just yes or no. In point of fact, the suggestion has been made by the honourable senator that people who are serving in the Sea King helicopters are being sent on missions which places their lives in danger as a result of the equipment. That is a pretty serious, fundamental charge.

• (1420)

**Senator Forrestall:** Do you deny it?

**Senator Boudreau:** I am not an expert on the military, so I asked them. I met, as recently as this morning, with the most senior people involved in the military and put the question to them. I told them that there has been some suggestion that senior military personnel are sending members of our Armed Forces out in equipment that puts their lives at risk. Some people are now second-guessing the views, opinions and statements of our most senior military personnel. Whom do we believe? Because I know there will be skepticism on the other side of the floor, I asked them, "On what do you base your view that Sea King helicopters are in fact worthy to perform the missions upon which you send the equipment and crew?"

Since this issue has been raised extensively in this place, a number of times, particularly yesterday, I want to take a minute or two to indicate to honourable senators the type of information given to me this morning by senior military personnel.

**Senator Lynch-Staunton:** You can name them.

**Senator Boudreau:** I will supply a list of the names to the honourable senator.

Honourable senators, let me tell you about the type of maintenance programs that are presently being done on this equipment. Routinely, there is a full inspection by military personnel after every 600 hours of operation. At every 2,400 hours of operation, a total inspection is done by IMP Aerospace in their headquarters in Halifax, where each year approximately five of the aircraft are virtually dismantled, inspected and reassembled to ensure that they are worthy to perform the tasks for which they are sent.

Let me now indicate to those honourable senators who are concerned some of the programs that are underway to ensure that those pieces of military equipment are properly able to perform their tasks.

There is an ongoing program involving centre-section maintenance and repair, which deals with the legitimacy of the fuselage of the aircraft. This program costs \$18 million and is already well underway. That entire program has covered 21 of the 30 military helicopters to date. Under this program, the balance of nine helicopters will be fully completed by 2001. That is an \$18-million program, on one particular element—maintenance and repair.



There is an ongoing engine upgrade program valued at \$10.4 million. Of the same 30 helicopters, nine have been completed to date and the balance will be completed by October of 2003.

There is a main gearbox upgrade program. I am told that the particular incident the honourable senator brought to the floor of the chamber yesterday involved the gearbox. The main gearbox upgrade is another \$18 million ongoing program. Three of the 30 helicopters have been completed and the balance will be completed by February of 2002.

I do not want to go on and on, honourable senators, but I could. For example, there is also a tail-wheel support assembly upgrade program.

**Some Hon. Senators:** Go on, go on!

**Senator Boudreau:** There is a standby attitude indicator program. There is an engine compartment fuel line routing and clamping improvement program. The list goes on.

Honourable senators, let us give the senior military personnel a little credit. Are they less concerned than we are about sending their own personnel out on equipment? I think not. That is not a charge I would make of them. In fact, they supplied me with information indicating that there is an extensive and committed program to ensure that these Sea King helicopters remain able to perform their functions.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise on a supplementary.

**The Hon. the Speaker *pro tempore*:** Honourable senators, the time for Question Period has expired.

**Some Hon. Senators:** Extend.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave for the extension granted?

**Some Hon. Senators:** No.

**Senator Hays:** It is a short day, honourable senators.

**Some Hon. Senators:** Oh, oh!

**The Hon. the Speaker *pro tempore*:** I am sorry, honourable senators, but I do not have unanimous consent.

#### DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on April 5, 2000, by Senator Roche regarding sanctions against Iraq, report of Secretary-General; a response to a question raised in the Senate on April 5, 2000, by Senator Gustafson and Senator Andreychuk regarding the farm crisis in the Prairie provinces; a response to a question raised in the Senate on April 5 and 6, 2000, by Senator Forrestall regarding Kosovo,

resolution on return of Serbian force; a response to a question raised in the Senate on April 6, 2000, by Senator Oliver regarding Nova Scotia, effect of proposed cutbacks on employees in Halifax; a response to a question raised in the Senate on April 6, 2000, by Senator Carney regarding Ucluelet-Tofino, British Columbia, request for replacement of leasehold fish licensing system; a response to a question raised in the Senate on April 7, 2000, by Senator LeBreton regarding the alleged involvement of the Prime Minister's Office in the purchase of property in Hull, Quebec; a response to a question raised in the Senate on April 7, 2000, by Senator Forrestall regarding Yugoslavia, rotation of peacekeeping soldiers home, problems of return flight; a response to a question raised in the Senate on April 7, 2000, by Senator Roche and by Senator Andreychuk regarding the level of pay for foreign service officers; a response to a question raised in the Senate on April 11, 2000, by Senator Lynch-Staunton regarding Israel, deployment of neutron anti-tank mines, possibility of representations by Prime Minister during visit; a response to a question raised in the Senate on April 11, 2000, by Senator Nolin regarding the Auditor General's report on RCMP screening process of forensic services and DNA testing; a response to a question raised in the Senate on April 12, 2000, by Senator Oliver and Senator Comeau regarding firearms registration form, nature of personal information requested; a response to a question raised in the Senate on April 13, 2000, by Senator Meighen regarding the possibility of suspension of anthrax vaccination program; and a response to a question raised in the Senate on April 13, 2000, by Senator Stratton regarding the flooding problem in Manitoba and Saskatchewan, possibilities of assistance.

#### UNITED NATIONS

##### SANCTIONS AGAINST IRAQ—GOVERNMENT POLICY

*(Response to question raised by Hon. Douglas Roche on April 5, 2000)*

Canada worked diligently throughout 1999 to re-engage the UN Security Council on Iraq in order to bring about humanitarian improvements and the return of weapons inspectors to Iraq. As you are aware, it was a Canadian idea to create three panels in January 1999 to examine the humanitarian, disarmament and Kuwaiti POW issues to review the status of these issues. The panel reports were instrumental in the development of a UN Security Council resolution to address the Iraq problem.

On December 17th, 1999, the UN Security Council passed the omnibus resolution on Iraq. The resolution calls for the reestablishment of a disarmament agency, the UN Monitoring, Verification and Inspections Commission (UNMOVIC) to replace the Special Commission (UNSCOM) which left Iraq at the start of the bombing campaign in December 1998. The resolution also invokes changes in the scope and delivery of humanitarian goods allowable under the current sanctions regime and sets clear disarmament conditions for the suspension of sanctions.



Passage of the Resolution began the clock ticking on a number of key humanitarian provisions which can be implemented without requiring reciprocal Iraqi concessions. These provisions include the lifting of the ceiling on oil exports, the addition of a cash component to humanitarian contracts to help with local implementation, and a streamlined approval process for humanitarian goods. The oil export ceiling has been lifted and Iraq now controls the quantity of its oil exports. The pre-approved list of goods in the food, education, medicine and agriculture sectors have been finalized and approved by the Security Council which will speed up the approval and delivery process for humanitarian goods. The humanitarian provisions of Resolution 1284 provide practical measures aimed at addressing the situation facing the people of Iraq. The resolution also provides a road map for the suspension and lift of sanctions as well as for increased investment in the Iraqi oil industry.

Canada has actively sought to improve the humanitarian situation in Iraq and has worked to ensure the inclusion of humanitarian provisions in Security Council Resolution 1284. To date, and despite growing international concern about the humanitarian situation in Iraq, the Government of Saddam Hussein has refused to accept the provisions of Security Council Resolution 1284. The Government of Iraq must bear the responsibility for not taking action that could lead to the suspension of sanctions.

The report "We the Peoples" can be found on the Web site at the following address:  
<http://www.un.org/millennium/sg/report/>.

### AGRICULTURE AND AGRI-FOOD

FARM CRISIS IN PRAIRIE PROVINCES—SUPPORT FUNDING  
TO FARMERS—DEMANDS OF BANKS—FARM CREDIT  
CORPORATION—EFFECT OF SUPPORT FUNDING TO FARMERS

*(Response to questions raised by Hon. Leonard J. Gustafson and Hon. A. Raynell Andreychuk on April 5, 2000)*

- Senior officials of Farm Credit Corporation (FCC) have met with Minister Vanclief as well as the Provincial Minister, Duane Lingenfelter, in Saskatchewan to discuss the situation and the program implemented by the Corporation to work with customers.
- FCC realizes the seriousness of the situation that many Canadian farmers face as a result of the low commodity prices.
- FCC staff have been proactive in contacting clients to discuss their financial situations, the government

encourages clients to take the initiative and contact their financial institutions prior to payment dates rather than waiting until they receive arrears notices.

- FCC customers are managing to make payments despite the commodity downturn. As of the end of March 2000 (FCC's year-end) 95 per cent of accounts were up-to-date nationally and 93 per cent in Saskatchewan.
- Arrears levels also have not yet shown a large increase although they are rising. In Saskatchewan at the end of March 2000, there were 674 customers in arrears compared to 552 at the same time last year. In Manitoba, there were 159 customers in arrears compared to 142 the same time last year. FCC will continue to monitor the situation closely in the coming year.

### UNITED NATIONS

KOSOVO—RESOLUTION ON RETURN OF SERBIAN FORCE—  
GOVERNMENT POLICY—REQUEST FOR ANSWER

*(Response to questions raised by Hon. J. Michael Forrestall on April 5 and 6, 2000)*

Under the Military Technical Agreement signed by the Federal Republic of Yugoslavia and KFOR, there is provision for the return of limited numbers of Yugoslav forces to Kosovo to carry out very specific functions such as maintaining a presence at cultural sites. However, any return of Yugoslav forces will be governed by a separate agreement which will only be concluded once the Commander of KFOR believes it appropriate. The Commander of KFOR clearly does not believe that the time has come to consider the return of Yugoslav forces to Kosovo. This is a view which is supported by the Government of Canada.

### CANADIAN BROADCASTING CORPORATION

NOVA SCOTIA—EFFECT OF PROPOSED CUTBACKS  
ON EMPLOYEES IN HALIFAX

*(Response to question raised by Hon. Donald H. Oliver on April 6, 2000)*

- The CBC is an autonomous Crown corporation guaranteed journalistic, creative and programming independence under the *Broadcasting Act*. Accordingly, the CBC is responsible for all aspects of its operations
- CBC management is overseen by a Board of Directors comprising a cross section of Canadians. This Board sets the overall strategic direction for the CBC, within the framework created by the *Broadcasting Act*, and approves all major financial decisions.

- In December 1999, the President of the CBC, Mr. Robert Rabinovitch, announced the creation of a Re-engineering Task Force. The Task Force is initially concentrating its efforts on four key areas: a redesign of English television, sports programming, property management, and the transmission and distribution system.
- The CBC President has indicated that the Task Force's work will be ongoing, and that it will be reporting from time to time to the CBC Board of Directors on its findings.
- There has been recent media speculation about possible layoffs in English television and potential reductions in the amount of local and regional television programming.
- However, the CBC has not announced any decisions resulting from the re-engineering process now under way within the Corporation. It would be inappropriate, therefore, to speculate on the eventual results of this internal exercise.
- CBC senior executives have emphasized that the Corporation's priority is to ensure taxpayers receive value for their investment in public broadcasting. They have also stressed that, while changes to the Corporation's operations are required, the CBC remains strongly committed to regional reflection.
- The federal government clearly recognizes the importance of providing the CBC with the financial stability it needs to adequately fulfil its mandate as the national public broadcaster. This responsibility includes providing programming that "informs, enlightens and entertains" and which reflects Canada and its regions.
- In the current fiscal year (2000-2001), the CBC will receive more than \$900 million in Parliamentary appropriations. The CBC also has access via independent producers to the \$200-million Canadian Television Fund. In addition, the Corporation generates more than \$400 million annually in commercial revenues, including advertising, programming sales and the operation of its specialty television services — Newsworld and *le Réseau de l'information*.

### FISHERIES AND OCEANS

#### UCLUELET-TOFINO, BRITISH COLUMBIA—REQUEST FOR REPLACEMENT OF LEASEHOLD FISH LICENSING SYSTEM

*(Response to question raised by Hon. Pat Carney on April 6, 2000)*

To hold a commercial fishing licence privilege, one must be a Canadian citizen, 16 years of age or older and must pay the applicable fee. In the Pacific Region, the Department of Fisheries and Oceans does not generally restrict the leasing

of fishing licences or require the owner of a fishing licence to be a fisherman. With respect to residency, DFO has no legal authority to stipulate where a licence holder resides.

The department has considered proposals to restrict licence leasing, for example, by imposing an owner-operator requirement on holding a licence. Proposals were considered in two major licensing policy reviews, as well as in the context of the Pacific Policy Roundtable. This is a contentious issue. There was no consensus. Ownership or leasing restrictions would be difficult and costly to enforce. Moreover, many long-term participants in the salmon and herring fisheries have consistently leased licences (and in some cases vessels). If the rules were changed to eliminate this practice, many of these people who live in coastal communities could be forced out of the industry.

Community ownership of a fishing licence is feasible, but the department does not provide licences or quota to communities for economic development reasons. Any relaxation of this policy would create competition among communities for government funding of licences and quota, and would dramatically complicate and further politicize resource allocation and licensing in the fisheries.

### PUBLIC WORKS AND GOVERNMENT SERVICES

#### ALLEGED INVOLVEMENT OF PRIME MINISTER'S OFFICE IN PURCHASE OF PROPERTY IN HULL, QUEBEC

*(Response to question raised by Hon. Marjory LeBreton on April 7, 2000)*

- The Department of Public Works and Government Services is a major property owner which provides office accommodation for public servants and Parliamentarians across Canada.
- In 1991, the Department of Public Works and Government Services entered into a 25-year lease with the owner with an option to purchase the Louis St. Laurent Building.
- The Government of Canada made a fair, valid and reasonable offer to purchase the Louis St. Laurent Building. The offer made on March 3, 2000, was equivalent to the outstanding value of the amount of the 1991 contract with the owner/ mortgagee. It was rejected on March 31, 2000.
- The building is an important element in responding to the Department of National Defence's requirement for stable, long term accommodation.
- With respect to the allegations that individuals have failed to register under the *Lobbyists Registration Act*, the Minister of Industry has indicated that the Ethics Commissioner will look into this matter.



## NATIONAL DEFENCE

### YUGOSLAVIA—ROTATION OF PEACEKEEPING SOLDIERS HOME— PROBLEMS OF RETURN FLIGHT

*(Response to question raised by Hon. J. Michael Forrestall on April 7, 2000)*

The safety and well-being of Canadian Forces (CF) members deployed abroad is of paramount importance and the Department of National Defence has taken every reasonable measure to ensure that the needs of its men and women are met.

During mid-December 1999, 1,300 Canadian Forces personnel were repatriated to Canada as part of a rotation of troops serving in Kosovo. As a means of effecting the return of these personnel, the CF complemented its own airlift capabilities by contracting civilian aircraft.

The flight on 15 December 1999 was one of a series of chartered civilian aircraft scheduled to return approximately 250 CF personnel from Skopje, former Yugoslav Republic of Macedonia. The aircraft's return to Canada was delayed by a total of 56 hours because of a series of unfortunate incidents including: mechanical problems; the need to locate and prepare a substitute aircraft; a medical emergency onboard the aircraft involving a CF member while en route to Skopje; several days of bad weather at the airport in Skopje; and the need to coordinate the arrival time in theatre with the local airport.

During these delays, CF personnel were first held overnight in their base camps and then transferred to Camp Maple Leaf, the Canadian Camp in Skopje. As the delays continued, CF personnel were relocated to a U.S. Army-operated heated shelter at the Skopje airport intended for KFOR troops awaiting delayed flights.

In accordance with NATO's airport contingency plan for KFOR troops, the U.S. Army provided 250 cots for the shelter, and breakfast and showers were available from a U.S. facility near the airport. These arrangements were made by the CF's National Command Element in the region. In addition, cellular telephones were supplied by the Canadian Forces to permit telephone calls home, a canteen was set up, and some soldiers were returned to Camp Maple Leaf to rebook holiday leave flights affected by the delayed departure. At no time were our troops abandoned by the Canadian Contingent.

The unfortunate and improbable combination of events that delayed the return of CF personnel to Canada is profoundly regretted. The patient endurance of those individuals affected and their families waiting at home is gratefully acknowledged.

While the delays in the redeployment of CF personnel was unexpected, the NATO back-up plan to use the U.S. facilities at the Skopje airport served them well. Every reasonable effort was — and will continue to be — made to help ensure that our military personnel, who give so much in the cause of advancing international peace and security, receive the necessary support they deserve.

## FOREIGN AFFAIRS

### LEVEL OF PAY FOR FOREIGN SERVICE OFFICERS— UNION NEGOTIATIONS—DISPARITY BETWEEN OFFERS TO SENIOR AND JUNIOR STAFF

*(Response to questions raised by Hon. Douglas Roche and Hon. A. Raynell Andreychuk on April 7, 2000)*

#### QUESTION:

Will the government undertake to review this matter and make an offer that is commensurate with current market conditions, so that those highly trained and deeply committed persons who work at home and abroad to advance Canada's worldwide interests will be paid at a level corresponding to their value to Canada?

#### ANSWER:

The Foreign Service Officers are represented by the Professional Association of Foreign Service Officers. The Association and Treasury Board, the employer, are currently engaged in the collective bargaining process which includes opportunities for third party review. It would be inappropriate for an additional review to be undertaken outside of this ongoing process.

#### QUESTION:

....why there is such disparity between the offer being given to the middle-and first class staff in the Foreign Affairs Department and the offer that the senior level within the foreign service are receiving?

#### ANSWER:

The current offer to Foreign Service Officers provides for the same relative increase for all levels. There is no other offer outstanding.



ISRAEL—DEPLOYMENT OF NEUTRON ANTI-TANK MINES—  
POSSIBILITY OF REPRESENTATIONS  
BY PRIME MINISTER DURING VISIT

*(Response to question raised by Hon. John Lynch-Staunton on April 11, 2000)*

- The article in the Sunday Times of London raises an hypothetical question; the author, citing military sources, says that “The Israeli government is considering planting small nuclear landmines near the Golan Heights...”
- As this is only an hypothetical question, there has been no changes in the evaluation of the risks to the safety and security of the Canadian peacekeepers currently on the Golan Heights.
- The Government of Canada will assess very carefully any development which might affect the Canadian peacekeepers in the region.
- The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, commonly known as the Ottawa Convention, does not cover anti-tank mines.

**SOLICITOR GENERAL**

AUDITOR GENERAL'S REPORT ON ROYAL CANADIAN  
MOUNTED POLICE SCREENING PROCESS OF  
FORENSIC SERVICES AND DNA TESTING

*(Response to question raised by Hon. Pierre Claude Nolin on April 11, 2000)*

The time frame for completing DNA analysis has improved dramatically since the Auditor General completed his audit in 1999. Initial screening tests, which had taken 82 days at the time of the audit, now take five days. All Priority 1 DNA cases, such as a murder where there is no suspect, are to be completed by the RCMP within 30 days by September 30, 2000, compared to the considerably longer average of 183 days, as cited in the Auditor General's report.

The Solicitor General met with the Auditor General prior to the tabling of his report to discuss his recommendations. The Auditor General did not audit the DNA data bank

per se, but did praise the government for moving forward on this important initiative.

**JUSTICE**

FIREARMS REGISTRATION FORM—  
NATURE OF PERSONAL INFORMATION REQUESTED

*(Response to questions raised by Hon. Donald H. Oliver and Hon. Gerald J. Comeau on April 12, 2000)*

Questions such as: during the past two years have you experienced a divorce, separation or breakdown of a significant relationship; a major failure in school, loss of jobs or bankruptcy; are not asked for the purpose of registering a firearm. They are however asked to those who are applying for a licence to Possess and Acquire firearms.

Following consultations with the Privacy Commissioner regarding the nature of the questions asked of applicants for a Possession and Acquisition Licence, the Privacy Commissioner concluded that the Government had sufficient statutory authority and research material to justify the kinds of questions and the time span they cover.

A 1995 Department of Justice report entitled Firearms Control and Domestic Violence outlined several factors that were present in a significant number of cases of domestic homicide. These risk factors were then integrated as questions in the Firearms Licence Application Form in an effort to improve the screening of applicants. The most common characteristics associated with domestic violence were having a criminal record, a history of domestic violence or alcohol or drug abuse. However, issues such as a recent stressful life event, such as large debts, bankruptcy, job loss, separation or divorce also played a large role. In view of these findings, it was decided, after a review by all of the Canadian Firearms Centre's Partners, that questions would be included in the Possession and Acquisition Licence application to address these issues. The primary purpose of the Firearms Licence is to assess the suitability of the applicant from a public safety point of view.

These questions are similar to those asked in connection with the former Firearms Acquisition Certificate (FAC). With the *Firearms Act* the application forms were reviewed and modifications were made to make the questions more appropriate in view of recent research findings.

When applying for a Possession and Acquisition Licence, each individual must fill out the appropriate form, which allows the Chief Firearms Officer in the province of residence to conduct verifications. The information provided by the applicant can be validated through a criminal record check, Firearms Interest to Police data bank, contact with two personal references named by the applicant, and if need be a community investigation. For the most part, the information on the application form, when combined with the good judgement and hard work of Firearm Officers is effective in screening out persons who may be at risk to misuse firearms. The increased screening for Possession and Acquisition Licence applicants is essential, as it responds to studies of past tragedies, which have shown that certain individuals are at greater risk to themselves or others. The objective is to prevent someone from purchasing a firearm while in an unstable and potentially dangerous situation. We believe that questions asked on the Possession and Acquisition Firearms Licence application are reasonable and justifiable when weighed against the greater public safety benefits to Canadian society.

The *Firearms Act* came into effect on December 1, 1998 and although the program is still in its implementation stage, it has already begun to improve safety. As of March 31, 2000, across Canada, 1522 firearms licences have been refused or revoked. This is over fourteen times more revocations from potentially dangerous individuals than the total for the past five years.

## NATIONAL DEFENCE

### POSSIBILITY OF SUSPENSION OF ANTHRAX VACCINATION PROGRAM

*(Response to question raised by Hon. Michael A. Meighen on April 13, 2000)*

The current threat level in the Persian Gulf does not warrant the vaccination of CF members. Consequently, there are currently no plans to administer anthrax vaccine to crew members of HMCS Calgary. HMCS Calgary will be carrying American anthrax vaccine on board should the threat assessment change and vaccinations be required for CF members. The vaccine is the best protection CF troops have against anthrax, a biological agent that is fatal in almost every case. Because there remains a residual threat level, the CF is taking the additional step of outfitting HMCS Calgary with a bio-detector that will provide early warning in the unlikely event of a biological attack. This will give crew members more time to take protective measures.

Further, all crew members will have state of the art individual protective equipment consisting of a mask, coveralls, gloves and boots. Personnel will also be equipped with a capability to conduct life-saving decontamination to further minimize any risk to personnel. Additionally, CF ships can create what is called a citadel where in the majority of the vessel is effectively sealed against contaminants. Outside air is filtered for any contaminants while the air pressure inside the citadel is kept higher than normal atmospheric pressure, meaning that in the event of a leak, air will be expelled from the ship, not drawn into the ship. Furthermore, CF medical staff and units are trained to deal with the medical aspects of operations in a nuclear, biological or chemical environment, if necessary.

The vaccine manufactured by Bioport has **not** been banned for use in the U.S., nor has Bioport been shut down.

## AGRICULTURE AND AGRI-FOOD

### FLOODING PROBLEM IN MANITOBA AND SASKATCHEWAN— POSSIBILITY OF ASSISTANCE

*(Response to question raised by Hon. Terry Stratton on April 13, 2000)*

The primary purpose of the Disaster Financial Assistance Arrangements (DFAA) is to provide basic assistance to individuals, small businesses and farmsteads and to restore public works to their pre-disaster condition. Damage costs that are insurable or recoverable in whole or in part under other government programs are excluded.

The projected DFAA eligible expenditures to be incurred by the province of Manitoba following the flooding of farmland in 1999 will amount to approximately \$16.4 million. This would result in a federal share of about \$12.75 million. The expenditures will cover eligible items such as private property, road repairs, culverts, and other infrastructure.

Assistance for agriculture-related losses such as weed control, loss of applied fertilizer and forage establishment are covered by the Crop Insurance program. The losses are therefore not eligible under the DFAA guidelines.

## QUESTION OF PRIVILEGE

### NOTICE

**The Hon. the Speaker pro tempore:** Honourable senator before I call the Orders of the Day, I will now recognize Senator Tkachuk.



**Hon. David Tkachuk:** Honourable senators, pursuant to rule 43, I ask for leave that I be permitted to give oral notice of a question of privilege that I gave in written form to the Clerk's office just a short while ago.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted that I suspend rule 43 and allow oral notice rather than written notice?

**Hon. Senators:** Agreed.

**Senator Tkachuk:** Honourable senators, the report of the Standing Senate Committee on Banking, Trade and Commerce on taxation of capital gains was presented today by Senator Kolber, the committee's chairman. This morning, the *National Post* ran a story on this report, effectively forcing Senator Kolber to present the report today rather than on the day that we had agreed upon. Obviously, the report was given to that paper by someone.

• (1430)

It has happened before, honourable senators, that reports of committees have been given to people and to members of the news media outside the chamber. I find that insulting to us all.

Therefore, I should like to see this matter referred to the Standing Committee on Privileges, Standing Rules and Orders. I want to know who leaked the report. I want some action taken. Perhaps honourable senators, staff or whoever did this will govern themselves according to the rules of this place.

I ask for His Honour's guidance in this matter.

**The Hon. the Speaker *pro tempore*:** Is the Honourable Senator Tkachuk moving that the matter be sent to the Standing Committee on Privileges, Standing Rules and Orders?

**Senator Tkachuk:** Yes, honourable senators.

**Hon. Jack Austin:** Honourable senators, my understanding of the procedure that is now followed by the Senate is that a question of privilege requires a *prima facie* finding by the Speaker. Therefore, evidence with respect to the alleged breach of privilege must be presented to the Senate and to the Speaker to assist the Speaker in his or her determination of a breach of privilege.

I have before me the story which appeared in the *National Post* today under the title "Senate report urges capital gains tax cut." The story quotes extensively from the report which was tabled today by Senator Kolber who is Chair of the Banking Committee. The last sentence in the story states:

The report is expected to be released in the next few weeks.

Let me say again, honourable senators, that the author of the article, Alan Toulon, quotes extensively from the report and admits that the report has not yet been issued by the Senate.

Under the rules, that is clearly a breach of privilege. I wish to refer the Senate to the 6th edition of Beauchesne's, paragraph 877(1), which states:

No act done at any committee should be divulged before it has been reported to the House. Upon this principle the House of Commons of the United Kingdom, on April 21, 1937, resolved "That the evidence taken by any select committee of this House and the documents presented to such committee and which have not been reported to the House, ought not to be published by any member of such committee or by any other person." The publication of proceedings of committees conducted with closed doors or of reports of committees before they are available to Members will, however, constitute a breach of privilege.

Thus, honourable senators, I believe that a breach of privilege is clearly demonstrated in this circumstance. Under our current process, it is usual, if the Speaker makes a *prima facie* finding of breach of privilege, that the matter be referred to the Standing Committee on Privileges, Standing Rules and Orders to determine whether in fact the breach of privilege can be established and reported to the Senate.

I have before me the fourth report of the Standing Committee on Privileges, Standing Rules and Orders, which recommends another process for making this determination. However, the Senate has not yet considered that report.

**Hon. Lowell Murray:** Honourable senators, I am glad that the Chairman of the Rules Committee has referred to the fourth report of his committee and to the process that is recommended therein when dealing with unauthorized disclosures of confidential committee reports and so forth. It is not really an alternative process for dealing with a question of privilege. It seems to me that what is suggested — and my friend can elaborate if he wishes, and I hope he will — is an additional process in the course of which the committee itself would be required to undertake an investigation of the circumstances surrounding the alleged leak; the means, nature and extent, et cetera. As part of the inquiry, it is likely that committee members or staff, as well as committee staff, could be interviewed, and so forth.

As I understand the recommendations of the committee, the question of privilege could still be considered by the Rules Committee while the Banking Committee conducted an investigation on its own to see where responsibility lay for the leak.

**The Hon. the Speaker *pro tempore*:** Are there any other honourable senators who would like to speak on whether or not there is a *prima facie* case of a breach of privilege?

**Senator Austin:** Honourable senators, might I respond to the question posed by the Honourable Senator Murray?



**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise on a point of order. This debate is completely out of order. Senator Tkachuk received leave to give oral notice of a question of privilege. Giving leave to table the question of privilege did not include starting a debate. According to our rules, a debate on privilege takes place at the end of the Orders of the Day. Right now we are interrupting the regular Orders of the Day with an issue which is completely out of order.

I sympathize with Senator Tkachuk's claim. However, we are not in the position to debate it, unless leave is granted to debate it. If we do that, then we will not get to what I think are more important matters, which is government legislation.

I hope that the honourable senator's question of privilege will be upheld. However, he only asked for the right to give notice. That did not open the matter to debate.

**Hon. Dan Hays (Deputy Leader of the Government):** Senator Lynch-Staunton has drawn our attention to an important procedural process, which I agree we should observe. Accordingly, I suggest that having received notice of the question of privilege, we return to it at the appropriate time, which is at the end of the Orders of the Day.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I rise now to give an indication of where we are at in terms of the three items of government business with which we are about to deal.

The first is Bill C-2, standing in the name of Senator Oliver. I understand that with the agreement of Senator Oliver there may be an intervention by Senator Fraser and possibly by Senator Wilson. From the point of view of the Deputy Leader of the Government — and I am in discussions with the Deputy Leader of the Opposition on this matter — we on this side have as an objective that this matter be voted on no later than the end of next week. I think this allows time to deal with what I know are important matters that senators wish to raise. In all fairness, we should let all honourable senators know that that is our objective.

I read in *The Ottawa Citizen* that Senator Nolin would like to propose an amendment to the bill. Other senators may want to propose amendments. Without taking advantage of our time, that pushes us up against the deadline.

I am aware that approximately 10 senators wish to speak to Bill C-20, which is an important bill. Again, I am in discussions with the Deputy Leader of the Opposition on this bill. Our objective is to have this bill in committee — that is, finished second reading stage — by the end of next week as well.

As I have said, I am aware of at least 10 senators who wish to speak to the bill, and we have heard from about 10 thus far. I know as well that at least 30 senators have participated in the debate to date, through questions and so forth.

The last item is Bill C-23. I think Senator Robertson intends to speak to it today. We would like to see this bill finished second reading stage, if at all possible, by tomorrow.

• (1440)

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the Deputy Leader of the Government has indicated his general wish as to how things might unfold. I would caution that it is much safer to speak as a historian than as a prophet around these parts.

We have identified those three pieces of government legislation. Events will unfold as they will, but there is no commitment to nail things down. We are making good progress on all three.

It was our expectation that our critic would be speaking today on Bill C-2, but he had an appointment. If other senators wish to go ahead of him, they may do so. However, we will speak to the other two bills today.

## CANADA ELECTIONS BILL

### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

**Hon. Lorna Milne:** Honourable senators, before we start the debate on Bill C-2, I should like to mention that I have received a letter from the Minister of State and Leader of the Government in the House of Commons regarding this matter.

**Hon. John Lynch-Staunton, Leader of the Opposition:** Honourable senators, I rise on a point of order. An item was called, and the honourable senator rose to speak making the comment "before we start the debate on Bill C-2..." How could an honourable senator interrupt the debate to talk about something else?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, perhaps Senator Milne, instead of saying "before we get into debate," could simply take advantage of the opportunity to rise on debate to bring forward this important information. I understand Senator Fraser also wishes to speak today.

**Senator Milne:** I am speaking to the bill, honourable senators. This is germane to the debate on this bill, because there were concerns raised in the committee about clause 18.1, which allows the Chief Electoral Officer to carry out a study on electronic voting. I received a letter this morning from the Minister of State and Leader of the Government in the House of Commons about this particular item. I should like to read it into the record.

The Honourable Lorna Milne, Senator  
Chair

The Standing Senate Committee on Legal and  
Constitutional Affairs

...

Dear Senator:

Thank you for inviting me to appear before the Senate Committee on Legal and Constitutional Affairs on March 30, 2000, to address Bill C-2 (the proposed new *Canada Elections Act*). I would like to respond to one issue that was raised by Committee members during my appearance.

As you know, the Standing Committee on Procedure and House Affairs voted to adopt clause 18.1 which authorizes the Chief Electoral Officer to carry out studies on electronic voting and, with the prior approval of the appropriate House Committee, to test an electronic voting process for future use in a general or a by-election. I would like to reiterate that clause 18.1 does not authorize permanent implementation of electronic voting nationwide. This would require both the House of Commons and the Senate to approve further legislative amendments.

Members of the Senate Committee nevertheless expressed the view that the Chief Electoral Officer should be required to obtain the prior approval of the House Committee and Senate Committee that normally consider electoral matters before testing an electronic voting process in an official election.

I have noted the proposal made before the Committee and I am fully disposed to offer amending section 18.1 the next time the government revises the *Canada Elections Act* to add the obligation for the Chief Electoral Officer to seek the approval of the Committees of both Houses before testing an electronic voting process. This proposal takes into account the importance of having an improved *Canada Elections Act* in place for the next election as well as the need to leave the Chief Electoral Officer enough time to complete the necessary preparation for the bringing into operation of this Bill.

It goes without saying that such amendment would not be required, in the event that the Chief Electoral Officer has

already proceeded to test an electronic voting process by the time the *Canada Elections Act* is re-opened. It should be noted, however, that nothing in Bill C-2 would prevent the Senate Committee from inviting the Chief Electoral Officer to appear before it to present his proposal for an electronic voting process.

Hoping that this offer will be of assistance to your committee, I remain

Yours sincerely,  
The Honourable Don Boudria

**Hon. Joan Fraser:** Honourable senators, I am grateful to Senator Oliver for agreeing to allow me to speak at this point, and I will keep my remarks brief. I should like to take just a few moments to explain why I shall vote for this bill, unamended, even though in committee I expressed serious concerns with one portion of it, concerns that were reported in the press.

Much of this bill is about the nuts and bolts of running elections, and I defer to those with more experience in the field for an analysis of that material. So far as I can tell, it is all reasonable and well designed.

There are, however, two parts of the bill about which I can speak on the basis of some experience. The first is the part relating to opinion polls, which has two main thrusts. It blacks out the publication of new opinion polls on election day, which I think is not only justifiable but desirable. It also, however, sets out detailed criteria for publication of the methodology of opinion polls, which would apply during the whole campaign period.

[Translation]

It is this last rule which concerns me. It seems to me that the bill goes much further than necessary. In a democracy, any move to limit freedom of expression must always be accompanied by extreme caution and hesitation. I understand the purpose of the legislation, which is to protect voters against misinformation not likely to be corrected in the normal course of electoral debate. It strikes me, however, that this more than legitimate objective could be accomplished through less drastic means, such as rules that would come into play only near the end of a campaign. I firmly intend to address this in the near future.

[English]

Meanwhile, however, there is another element of this bill that I consider so important that I believe it is urgent to get it passed and into the law books as soon as possible, that is, without sending the bill back to the House of Commons to await who knows how long a debate there, and perhaps extinction there. The portion to which I refer concerns the new rules to control third party spending, specifically third-party advertising which is covered in Part 17 of the bill. Some Canadians believe that it is simply wrong as a matter of principle to limit third-party spending on elections. I am not one of those Canadians.



In my province, Quebec, we have had restrictions on third-party spending for more than 20 years now. In my time as a newspaper editor, I had to deal with those restrictions, and they have served us very well. There have been some rough spots that have been addressed by the court, which I believe are avoided in the bill now before us. However, those rules have meant that it has been impossible for any third party to exercise undue influence on the voters — in effect, to buy an election or a referendum. They are one of the key reasons why Quebec has been able to hold such crucial votes affecting the destiny of the country in a climate where all sides were willing to trust the democratic process.

Under the rules set out in this bill, everyone still has freedom of speech, but no third party, no interest group, will be able to use that freedom to swamp competing voices. The democratic process will be aided, not limited.

Honourable senators, contrast that with the situation in the United States. In this year's American federal election, it is estimated that soft money, what we would call third-party spending, will amount to US\$500 million. That does not even include soft money that goes to state party committees, or the money spent by third parties on election ads that address issues rather than supporting or opposing candidates.

We all know the corrosive effect that the need to find these huge sums of money has had on American election politics. Honourable senators, that is surely not a pattern that we would want to see in Canada.

• (1450)

However, as I listened to witnesses in the committee hearings on this bill, I could see the beginnings of that trend very clearly. I believe we need to stop it now. That, honourable senators, is why I shall enthusiastically support Bill C-2.

On motion of Senator Nolin, debate adjourned.

## MODERNIZATION OF BENEFITS AND OBLIGATIONS BILL

### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Pépin, seconded by the Honourable Senator Maheu, for the second reading of Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations.

**Hon. Brenda M. Robertson:** Honourable senators, I am rising to voice my support, as Senator Pépin did yesterday, for Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations, as passed in the other place on April 11, 2000.

Although in some ways it is housekeeping, the purpose of this omnibus bill is to ensure that same-sex, unmarried or

common-law couples have the same financial benefits and obligations as opposite-sex common-law couples. The bill is intended to ensure that the federal government treats opposite-sex and same-sex couples equally. In order to implement the principle of equal treatment for all common-law relationships, amendments to 68 federal statutes affecting 20 federal departments and agencies will be required.

Honourable senators, as previously stated, equal treatment means the bill will provide benefits previously unavailable to same-sex couples while also imposing new obligations. In terms of benefits, for example, in the Income Tax Act, with the government's proposed legislation an individual in a same-sex relationship may declare their partner and/or children as dependants on their income tax returns and thereby declare daycare and medical costs as deductible expenses. In another example under the Canada Pension Plan, the surviving partner in a same-sex relationship would qualify for survivor's benefits based on his or her spouse's contribution to the plan.

In terms of new obligations, under the Bankruptcy and Insolvency Act, for instance, married persons are not allowed to transfer ownership of their home or property to their spouse prior to declaring bankruptcy. The changes would place the same obligations and restrictions on both same-sex and opposite-sex relationships.

Under the Insolvency Act, the Canada Business Corporations Act, the Bank Act, the Canada Elections Act, and the Trust and Loans Companies Act the changes would provide for similar limitations, prohibitions and obligations for opposite-sex and same-sex common-law couples that now apply to married couples. Therefore, it seems to me that Bill C-23 will provide simple fairness in the delivery of federal government programs to all common-law couples.

Honourable senators, the federal government, Nova Scotia, New Brunswick, Quebec, Ontario, Manitoba, Saskatchewan, British Columbia, Yukon, Nunavut and the Northwest Territories have extended survivor pension benefits to same-sex partners of their public servants. As well, British Columbia, Quebec and Ontario have begun to amend their legislation more broadly to include same-sex couples. Many private businesses, including Bell Canada, Sears, IBM, the TD Bank, Bank of Montreal, Air Canada, as well as 30 municipalities and 35 universities across Canada provide benefits to the same-sex partner of their employees.

In light of what is already occurring in both the private and the public sectors, I do not believe that Bill C-23 is groundbreaking or trend-setting, as some critics have claimed. I believe the provisions detailed in Bill C-23 are simply the next logical step on the road to equality.

The 1998 Angus Reid poll, which was referred to in committee testimony in the other place, stated that two-thirds of respondents expressed the view that same-sex couples should receive equal relationship rights and responsibilities as opposite-sex couples. If anything, honourable senators, Bill C-23 is simply catching up to modern times.



Perhaps the best characterization of this legislation is that it is a housekeeping or technical bill. This housekeeping bill will simply bring federal statutes in line with the findings of the courts and human rights tribunals concerning the equal treatment of same-sex couples. The message emanating from the courts and the tribunals is loud and clear. Common-law same-sex couples must be accorded the same access as common-law opposite-sex couples to enjoy the social benefits programs to which they have contributed.

Honourable senators, Canada prides itself on being a leading nation. As such, discrimination based on sexual orientation is unacceptable. Thankfully, Bill C-23 does not condone or condemn an individual's sexual orientation, it simply encourages equality. Bill C-23 is not about marriage, nor does the bill threaten the institution of marriage. The bill maintains a clear legal distinction between marriage and common-law unmarried relationships. It does not change the definition of marriage that has been included in the bill as an amendment. The interpretation section reads:

For greater certainty, the amendments made by this Act do not affect the meaning of the word marriage, that is, the lawful union of one man and one woman to the exclusion of all others.

Honourable senators, Bill C-23 has somehow been caught up in the debate about the proper relationship between Parliament, the court and the executive. It has been said that Bill C-23 is the result of the rulings of judges, who are not elected, and chairs of tribunals with no direct accountability to the people, and that Bill C-23 is the consequence of the political activism of the courts, in particular the Supreme Court ruling in *M v. H*. Although critics of the federal government have made the case that this administration is guilty of delegation of law-making to the courts, in this particular matter I believe that the onus is on Parliament.

The decision precludes the government limiting benefits and obligations by discriminating against same-sex common-law relationships. Denying equal treatment before the law to same-sex couples is a violation of both the Canadian Charter of Rights and Freedoms and the Canadian Human Rights Act. I am aware that some critics of this bill believe that it puts us on a slippery slope to who knows where. I am satisfied that it does not. The bill is not about special rights, special rules or special interest groups. It is most certainly not about legislating morality.

Honourable senators, I am looking forward to studying the bill in detail when it is referred to the Standing Senate Committee on Legal and Constitutional Affairs. However, in the meantime, I wish to raise three issues that cause me some concern.

My first concern is the possibility that Bill C-23 could be easily abused. For example, it would be easy for two individuals who simply want to share an apartment to declare themselves common-law partners in order to receive the benefits. How would the Canada Customs and Revenue Agency deal with a situation of possible abuse and what control mechanisms would be available to prevent such abuse?

My second concern is the complex issue of other dependent relationships not specifically detailed in the bill, and there was some discussion on that here yesterday afternoon. Many Canadians have expressed concern surrounding the fact that the bill does not make provisions to extend benefits and obligations to other family relationships. The premise is that we want our laws to encourage families to take care of each other, and it is also based on the fact that many adult Canadians reside with elderly parents, brothers, sisters or other relatives. In other words, would it not be appropriate to treat other family relationships in the same way that Bill C-23 proposes to treat common-law relationships?

Some parliamentarians have taken the stance that Bill C-23 is bad legislation because it does not take into account all Canadians and the many types of relationships that exist. I anticipate those witnesses appearing before the Standing Senate Committee on Legal and Constitutional Affairs will be asked to testify to what appears to be an inherent unfairness about the scope of the bill. I am also encouraged by the undertaking of the Minister of Justice to refer this particular issue to a parliamentary committee.

• (1500)

I understand that the minister is consulting with the Chairs of the Commons committees on human resources and on finance to develop a process by which the broader issue of dependency could be reviewed. I look forward to getting an update from the minister on the progress she is making when she appears before the Senate committee.

The broader dependency issue is a tricky one. The implications for both individuals and Canadian society as a whole are unclear. Much thought must be given to a whole range of questions. This is the central question: While benefits which reflect dependency would be welcome, should legal obligations be imposed on individuals for those relatives with whom they reside? Other questions need to be addressed. What are the definitions of dependency and relationship? What relationships would be allowed? Would relationships should be self-declared, or would the government issue some kind of license or need some kind of proof? How many people would relationships of dependency involve — any two people who live together or an unlimited number as long as they live under the same roof? Should some form of public registry be established to keep track of relationships? If so, how would privacy issues be addressed? How would negotiations with the provinces be completed?

Honourable senators, I suggest these are all very tricky issues involving a new legal relationship, and they are by no means the only issues that will require a great deal of study before I will be prepared to take a stand on this particular aspect of the debate.

It does seem clear-cut to me, honourable senators, that we should support this bill which ensures that the federal government grants equal treatment to all common-law relationships. We may support the bill now, prior to determining the finer details of other dependency relationships.

My third concern relates to social policy-making in general. The Minister of Justice speaking in the other place during the second reading of Bill C-23 stated:

Important matters of social policy should not be left to the courts to decide. If Parliament does not address the issue, the courts will continue to hand down decisions in a piecemeal fashion, interpreting narrow points of law on the specific questions before them. This guarantees confusion and continuing costly litigation. Most worrisome, it risks removing us from the social policy process altogether.

Honourable senators, I could not agree more with the Honourable Minister of Justice. Canadian society has undergone fundamental changes in recent decades, to the extent that the underlying assumptions upon which social policy and family support systems are based are out of date.

A recent editorial in *The Ottawa Citizen* makes the case. It argues that it used to be that, if a couple lived together, then they were married. The wife did not earn an income outside the home. Contraception was not always accessible or effective which meant that marriage almost always led to children. The editorial goes on to argue:

...it's hard to exaggerate how much this picture is changing. According to the 1996 census, 15 per cent of couples are common law. There are well over one million lone-parent families. And modern contraception, especially the pill, has made procreation more clearly a matter of choice for couples — contributing to the plummeting birth rate and a growing number of childless couples. Then there was the economic revolution that saw women enter the work force. By 1996, the husbands were the sole income earners in just 16 per cent of marriages.

The point is, honourable senators, the times are rapidly changing. The old assumptions governing public policy, in particular policy-making of social issues, are not keeping up. It is as if a vacuum exists between the old thinking and contemporary society's demands. That vacuum is being filled by examples of public policy based on court decisions handed down in piecemeal fashion.

It is as if we have lost control of social policy-making. We are always mopping up after the fact. We cannot seem to see the social changes in advance. We can foresee the changes in technology, but we cannot see the changes in the social structure. They are always there, but by the time we catch up to that social change, so much has gone by and so much then needs to be done. We are always mopping up in this regard.

Quoting further from the *The Ottawa Citizen* editorial:

So many of the basic assumptions on which government builds systems of family support have changed. How have governments responded? Certainly not by truly rethinking those systems. Instead, new segments of society have simply been tacked on to existing structures as political circumstances warranted.

It could be that Bill C-23 is just such an illustration. That being said, honourable senators, I commend the government for taking active steps to eliminate the discrimination pointed out to us by the courts. I intend to support this housekeeping bill. I urge all honourable senators to do so as well.

**Hon. Lois M. Wilson:** Honourable senators, in my view Bill C-23 is progressive Canadian legislation. As you know, the current bill came about as a response to the many rulings of the Supreme Court through which the government has been directed to address the inequities in the application of Canadian law and rights.

I support this bill. For years, common-law heterosexual couples have been getting the same benefits as married heterosexual couples, yet no questions have been raised as to the validity of their receiving the same treatment as their married counterparts. No one starts out wanting to be gay or lesbian partly because of the continuing social stigma this carries, but gays and lesbians do exist. This bill recognizes this and provides fundamental rights and obligations to them.

I do not think this bill threatens the status of marriage as an institution. Marriage between heterosexual couples exists for many, many reasons other than procreation. Nor does the bill necessarily undermine the family. I think of two lesbian friends who are raising a child they have acquired since their union. They are doing an excellent, responsible job with that family.

What does the future hold? In my view, it is only a matter of time before the definition of marriage as set forth in this bill is challenged and the government is ordered to address the issue of equity in marriage or union within the gay and lesbian communities. Apparently Canadians need more time to think about this issue, but, be assured, it will be raised in the future.

It behooves us to prepare ourselves carefully and responsibly for that eventuality. The presenting issue now is Bill C-23, and I fully support its passage.

On motion of Senator Cools, debate adjourned.

## **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.



**Hon. Norman K. Atkins:** Honourable senators, I join the debate on Bill C-20 with a great deal of trepidation. I have listened to and read every word said here. I admit to being impressed by the depth of knowledge and experience expressed not only in the speeches but in the question and answer sessions that have followed.

Before I begin, I want to put my credentials or perhaps lack thereof in plain view. No one will ever accuse me of being a constitutional lawyer. I will leave that to Senator Beaudoin and others. Right off the top, I say, Do not be disappointed at not receiving a constitutional treatise from me.

• (1510)

On the other hand, I have been a senator since 1986. I am not sure what that gives me. Perhaps, if nothing else, it provides for me a sense of history, a sense of appreciation of the traditions and powers of this place. What I believe I bring to this debate is a sense of politics, a sense gained in some 38 campaigns spread out over 48 years.

When I look at this bill and when I look at its genesis, the way it has been drafted, its title, and the nature of the debate in the other place, I must admit — and I truly mean it — that this bill is good politics.

However, and this is the point I will try to develop today — and it is a question raised by Senator Kinsella at the beginning of his speech — it may be good politics, but is it right? Let us go back in time and attempt to determine from where this bill came.

I suppose it originated out of the debacle that was the federal government's response to the Yes side of the 1995 referendum campaign in Quebec. We all remember the dying days of that campaign, when the Prime Minister suddenly became engaged in it. While the No side was victorious, but only by a slight margin, history will write that the blame for the close margin of victory rests squarely on the shoulders of the Prime Minister, who, in part, had to be rescued by the then leader of the federal Progressive Conservative Party and the now leader of the Quebec Liberal Party, the Honourable Jean Charest.

Part of the hasty response by this Liberal government to the results in Quebec was the passage through the House of Commons of a resolution recognizing Quebec as a distinct society and a badly drafted bill that supposedly amended the constitutional amending formula by giving a veto to Quebec, British Columbia and, by implication, Alberta over future constitutional change. These were the immediate responses to the 1995 referendum result. Apart from this bill, little else has happened.

The Minister of Justice then decided to refer three questions to the Supreme Court of Canada by way of the reference procedure — three questions to which, as Senator Lynch-Staunton pointed out, any first-year law student would know the answer. This was an avenue that we opposed as a political party. It is the responsibility of government, of Parliament, of members of the Senate and the House of Commons to work as best they can to

keep Canada together. This is not a responsibility to be passed on to the Supreme Court of Canada.

However, the Supreme Court did respond and, as well as giving answers to the question posed to it, the court thought it would be helpful to try to find a middle ground. While it determined that Quebec could not declare independence unilaterally, it did determine that secession was a real option after a referendum that contained a clear question which received support from the clear majority.

It was also the opinion of the court that negotiations had to take place after such a vote, and it attempted to define the breadth of those negotiations.

Honourable senators, I now want to deal with the government's response to that Supreme Court opinion, Bill C-20.

The two political parties represented in the Senate are committed to finding or developing policies that will keep Canada together. We may differ on the means but, in the end, we are all strongly committed to the goal of national unity.

During the period from 1984 to 1993, the Progressive Conservative Party attempted on two different occasions to respond in a provocative way to the issues of national unity. When you act in what you believe to be the best interests of the country, sometimes you succeed and sometimes you fail.

As honourable senators know, the Meech Lake Accord was the Progressive Conservative's response to the constitutional issues raised by the Province of Quebec. The Charlottetown accord occurred as an overall response to the need for fundamental change in this country. Supported by the Liberal Party, it did not survive a nationwide referendum.

My point is that although we failed in our attempts, we tried. We tried to offer positive renewal, which was supported by all organized political parties in the other place and all premiers and aboriginal leaders. Unfortunately, the government's response to the continuing national unity or revitalization of the federation debate is a bill that outlines how secession could take place.

The government tells us this bill is necessary to implement the Supreme Court of Canada's decision. I must agree with Senator Fraser when she stated that she thought the decision was enough — there was no need for a bill.

Again, although nothing in the Supreme Court decision requires the government to act, the government drafted the bill in terms that make it seem like they are required to bring in this bill. In the preamble of the bill, there are eight paragraphs. The Supreme Court of Canada is mentioned in five of them. In fact, as Senator Kinsella pointed out, a version of the bill is available from Minister Dion's department where each clause and each preambular paragraph has the so-called relevant paragraphs of the Supreme Court judgment set out below them. We have a bill — purported to be required by the Supreme Court opinion, which sets one part of the country against the other — apparently justified by this court opinion. It is great politics but, I ask you, is it right?



Why did the government act? Senator Boudreau helps us with that. The government acted because Premier Bouchard refused to commit himself to not calling another referendum in the current mandate of the present Quebec government. Indeed, instead of responding by sitting down with the provinces and discussing the major issues in the federation — that is, health care, education, the economy, lack of productivity — discussions that would convince the Quebec government and Quebecers that a referendum would be futile and therefore not to have a referendum, what does the government do? It brings in a bill to try and regulate how a referendum that will result in separation will be held — that is, how the federal government will respond to a referendum. It is brought in under the guise that it will bring clarity to the situation.

Who could be against clarity? Obviously, only those who oppose the bill. Fortunately, however, one federal political leader in this country had the courage to state that this was not the way to govern a federation. The dismantling of the country is not the job of the federal government. It was the Right Honourable Joe Clark who was able to say publicly that this bill does not do what it says it does. It ignores the real duty of the central government — the duty of keeping the country together. It gives the appearance of government action when the government is not really acting at all.

Honourable senators, there is no clear question in the bill. There are not even guidelines as to what would constitute a clear question. The clear majority is not spelled out, either. Where is the clarity? What is spelled out is a timetable that puts the government in a straitjacket, limits its responses and sets up a situation where a province actually now knows exactly the response time and the limitations on the response of the federal government to both the question and the majority vote required.

Claude Ryan, in an April 6, 2000, article published by the C.D. Howe Institute in reference to the clear question and clear majority, states:

But Byzantine discussions over what constitutes a clear question and a clear majority are far removed from the true heart of the debate.

In effect, the Supreme Court gave its opinion on the question of how a sovereignty project could be conducted in a manner consistent with the Canadian constitution. There are, however, more important questions to pose — questions of a fundamentally political, rather than legal, nature: Why does a sovereigntist movement exist in Quebec? Why has this movement been so significant over the past quarter century? What is the best strategy to counter the idea of Quebec sovereignty?

Let us look more closely at the bill, honourable senators. Under close examination, it provides a limited role for the Senate, as originally drafted no role for the aboriginal peoples of Canada, who are recognized in the Constitution, and the provinces have only a consultative role. The only legislative body where the majority is controlled by the Prime Minister's Office is the body that is given a decisive role in this legislation.

• (1520)

On reflection, perhaps we in the Senate should be complimented because it is obvious the PMO does not believe it can control the Senate. Remember, there have been times, as Senator Kinsella so rightly pointed out, when the Senate has defied the PMO and voted down legislation. Again, the Senate is not an institution universally loved in this country, so why not limit its role? Again good politics, but I ask, is it right? Of course it is not.

Honourable senators, the explanation from Senator Boudreau confuses the meaning of responsible government and the constitutional role of the Senate. Senator Fraser tried to help out by redrawing the definitions of legislation. As you know, we have private bills and public bills. Now, according to Senator Fraser, we will have different classes of bills: very important, highly political bills that need not involve the Senate, and ordinary bills with which the Senate can be entrusted.

Once the House of Commons is placed in the position of determining the clear question and the clear majority, there is no reason constitutionally, legally or otherwise for excluding the Senate from an equal role. There is simply no valid reason to preclude the Senate from a role equal to that of the House of Commons. This is why I intend to support the motion of Senator Lynch-Staunton that the committee be instructed to amend Bill C-20 to rank the Senate in a role equal to that played by the House of Commons.

I believe that at this stage it is important to get to the heart of the debate. The debate is not about how to react to referenda once called, but how to deal with the issues that are of concern among all participants in the federation and seek renewal.

In a speech given at the annual awards dinner of the Public Policy Forum held on April 6, 2000, Raymond Garneau President and CEO of Industrial-Alliance Life Insurance Company, former federal member of Parliament for Quebec, and former minister of finance of the Government of Quebec, raised the lack of federal initiatives in this area as an issue of great concern. He stated:

I am preoccupied by the fact that very little is being done anymore at the grass-roots level to promote the kind of Canada in which most Quebecers would be proud to be part. My sense is that the do-nothing strategy which led us to the disastrous 1995 referendum results remains firmly in place. It was risky in 1995 and still is very risky today.

I hate to say it, but when over 49% of the population of the second largest province in this country has decided to vote for separation and abandon their loyalty to Canada to keep only their love for Quebec, I think it is wrong to believe that "to turn the page and look at the future" will do the job. I know that a large number of Canadians are anxious to turn the page. I am too, but the "do-nothing" strategy will do little to bring together the love and loyalty of Quebecers for Canada.

I, too, am concerned that, with Bill C-20 as the only federal response to the situation in Quebec, the government is missing the mark once again. I can appreciate the government's preoccupation with referenda. It is our history that the only time referenda have been held in the province of Quebec on separation is when there was a Liberal government in Ottawa. I believe that with Bill C-20 the government is playing a dangerous game. I will again quote Mr. Garneau commenting on Bill C-20:

I raise all of this now to cast a somewhat different light on the Clarity Bill currently before Parliament. I think I understand what the Clarity Bill is intended to do. What it most certainly will not do is to bring us any closer to resolving the deep conflict which exists for Quebecers in rationalizing the duality of love and loyalty for Quebec and for Canada.

It is too much to hope that the government would come to its senses and withdraw this bill — reverse itself like it did on the NHL team subsidies. If it did withdraw the bill, or decide not to proclaim it, it would show that it understood how the history of Canada has developed and the enduring value and wisdom displayed by the Fathers of Confederation as they wrote the old British North America Act, now known as the Constitutional Act, 1867.

Claude Ryan, in an article from which I quoted previously, agrees with this point of view, but puts it in the context of further negotiations to be entered into by Quebec. He states:

Quebecers, I admit, too often propose global changes to the distribution of powers between Ottawa and the province. The division of powers set out by the Fathers of Confederation in 1867 had much to recommend it. It was imbued with realism, and there is no need to start again with a clean slate. Quebec should proceed instead in a more constructive manner.

**The Hon. the Speaker *pro tempore*:** I am sorry to interrupt the honourable senator, but his 15 minutes have expired.

Are you requesting leave to continue, Senator Atkins?

**Senator Atkins:** Yes, please.

**The Hon. the Speaker *pro tempore*:** Is leave granted, honourable senators, for the Honourable Senator Atkins to continue?

**Hon. Senators:** Agreed.

**Senator Atkins:** It is my belief that governments over the last 30 years have not given enough credit to the Constitution as originally drafted. It did not contain a method by which the country could be broken up. It forced politicians, as Senator Lynch-Staunton pointed out, to negotiate and compromise in order to get on with building and growing this country, but provided no easy way out, no road map to secession.

Honourable senators, this bill may be good politics, but I ask you again, is it right? It simply provides for the government the appearance of doing something about renewing the federation, while the government abdicates its responsibility to work to make the federation function better. This is the role of government, not the role it has assumed by bringing in legislation designed to stir up the majority against the minority, which, in reality, solves nothing except perhaps an attempt to reinforce the government's popularity so that it can issue a writ and ask Canadians to elect them for another term in office. It is now time for the government to adopt a positive attitude and, in discussions with all the provinces, including Quebec, look at the problems existing in our federation and work together to solve them. This is far better than the current negative approach, which involves trying to write rules to govern the breakup of this country.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I move the adjournment of the debate. I am not sure which of our colleagues will take up Bill C-20 at the next sitting. However, I will move the adjournment of the debate on behalf a senator on our side who will identify himself or herself tomorrow.

**Senator Lynch-Staunton:** That is not the way to adjourn debate.

On motion of Senator Hays, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, the other business that would be dealt with now is the matter of privilege. However, I am advised by the deputy clerk and the Speaker that this will be taken care of if we adjourn at this time. It being 3:30 p.m., this matter will be dealt with at the end of Orders of the Day at the next sitting in that a house order takes precedence.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

Leave having been given to revert to Notices of Motions:

**Hon. Mira Spivak:** Honourable senators, I give notice that tomorrow, Thursday, May 4, 2000, I will move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources have the power to sit at 5 p.m. on Tuesday, May 9, 2000, for the purpose of hearing witnesses in its special study, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

The Senate adjourned until tomorrow at 2 p.m..



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CANADA

# Debates of the Senate

2nd SESSION

• 36th PARLIAMENT

• VOLUME 138

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OFFICIAL REPORT  
(HANSARD)

Thursday, May 4, 2000

THE HONOURABLE ROSE-MARIE LOSIER-COOL  
SPEAKER *PRO TEMPORE*





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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Thursday, May 4, 2000

The Senate met at 2:00 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

[Translation]

### SENATORS' STATEMENTS

#### THE RIGHT TO VOTE FOR WOMEN OF QUEBEC

SIXTIETH ANNIVERSARY

**Hon. Lucie Pépin:** Honourable senators, I rise today to draw attention to the 60th anniversary of the right to vote for the women of Quebec.

On April 25, 1940, the women of Quebec obtained the right to vote in provincial elections. We were the last Canadians to obtain that right. In 1916, the women of Manitoba, Saskatchewan and Alberta were able to vote provincially, followed by the women of British Columbia and Ontario in 1917. The women of the Maritime provinces followed between 1918 and 1925.

Not that Quebec women were not clamouring for the right to vote! The Constitutional Act, 1791 allowed *persons* responding to certain property ownership criteria to vote. The majority of these *persons* were men, of course, but a few women property owners were able to vote between 1791 and 1849, at which time the Parliament of the Province of Canada withdrew that right.

In the early 1920s, some women in Quebec — including Marie Gérin-Lajoie, Idola St-Jean and Thérèse Casgrain — made representations to the Quebec Legislative Assembly, what today we would call lobbying. Starting in 1922, a bill on women's suffrage would be introduced every year by male MLAs sympathetic to the suffragist cause since, as you will realize, there were no women MLAs at the time!

The opposition to this suggestion was strong. Premier Taschereau fiercely opposed women's suffrage and continued to do so until the end of his term, in 1936. When Maurice Duplessis, a man with close ties to the clergy, came to power, he was not any more in favour of having women vote in Quebec elections. The honour for this goes to the Liberal government of Adélard Godbout.

Many historians see Adélard Godbout as a reformer if not a forerunner of the quiet revolution. A number of forward-leaning measures are associated with him, including a law in the early 1940s that required young people to attend school to the age of 14 and a labour code recognizing unions. However, most

important, Adélard Godbout gave women the right to vote in Quebec elections, which to my mind was his most courageous decision.

A number of arguments were raised against giving women the vote. I should like to read you an extract from a text by Henri Bourassa, a politician and founder of the paper *Le Devoir*:

Parliament, said an old English attorney, can do everything, except change a woman into a man and a man into a woman. It is precisely this impossible task that the advocates of women's suffrage have set for themselves. The difference in the sexes has created the difference in sexual functions, and the difference in sexual functions has created the difference in social functions.

The arguments have changed a bit, but a certain resistance remains.

The most recent electoral reform, introduced last fall in the other place, provided the opportunity for all sorts of arguments to be made against amending the law to promote the election of women to the House of Commons. In fact, the amendments to the bill were withdrawn. I am happy to announce, however, that the constitution of the Liberal Party has been amended to help encourage women to run in politics. I would hope that all our colleagues in the Conservative Party will do the same in the fight against ignorance and prejudice so that women may be recognized as full-fledged Canadian citizens.

[English]

### NATIONAL DEFENCE

IROQUOIS HELO DETACHMENT  
COMMANDER'S SITUATION REPORT

**Hon. Gerald J. Comeau:** Honourable senators, yesterday the Leader of the Government in the Senate boasted of how safe the Sea King helicopters are and assured us that we should not be concerned about the safety of military personnel who fly them. Senator Hays refused to provide the consent required to allow me to ask a question regarding a report, which I will now summarize for the record.

This is a December 15, 1999, Iroquois Helo Detachment Commander's Situation Report — Standing Naval Force Atlantic 3/99 Operations Report detailing a month-by-month breakdown of aircraft availability.

July: Days at sea, 6; missions scheduled, 9; missions cancelled due to weather, 1; missions cancelled due to operations, 1; missions cancelled due to aircraft, 0.



August: Days at sea, 18; missions scheduled, 28; missions cancelled due to weather, 0; missions cancelled due to operations, 5; missions cancelled due to aircraft, 1.

September: Days at sea, 20; missions scheduled, 33; missions cancelled due to weather, 2; missions cancelled due to operations, 4; missions cancelled due to aircraft, 3.

October: Days at sea, 14; missions scheduled, 32; missions cancelled due to weather, 0; missions cancelled due to operations, 2; missions cancelled due to aircraft, 18.

November: Days at sea, 11; missions scheduled, 26; missions cancelled due to weather, 0; missions cancelled due to operations, 0; missions cancelled due to aircraft, 16.

December: Days at sea, 9; missions scheduled, 13; missions cancelled due to weather, 1; missions cancelled due to operations, 0; missions cancelled due to aircraft, 11.

Honourable senators, we are now getting the picture. Upon reading this document, the minister will see that this matter does require a major review.

I will ask a question of the minister on this topic during Question Period.

• (1410)

## IN RECOGNITION OF NAVAL FORCES

**Hon. Shirley Maheu:** Honourable senators, yesterday I was able to share a poem from an anglophone person about the RCNVR and the reserves. Today I have a liberal or free translation from a senior who was a member of my riding constituency when I was a member of Parliament. It goes as follows.

[Translation]

### A NAVAL REMEMBRANCE

They came from the wheat fields,  
The forests, the towns,  
Great cities and mountains,  
Some were of renown.  
Many were mere youth  
Most all of them young,  
The eager, the scared  
Knew not what they dared.  
They withstood every hardship  
Long gut-wrenching days,  
Lonely vigils on watch,  
They proved that they cared.

Overworked, overtired,  
Midst sweat, tears and toil,  
And oft when torpedoed  
Were covered in oil.  
Unable to shower —  
Subs nearby did hover;  
Storms, ice and fog,  
Encompassing fear  
Of collisions so near;  
Messdecks sloshing  
With sea, spew and gear;  
Homesick and seasick  
They still sallied forth  
These young men, Canadian,  
At sea proved their worth.

Their equipment not modern  
Their ships lacking, too,  
Their "on-the-job training"  
Pushed most convoys through.  
Some shipmates were lost  
By the wrath of the sea,  
By the bombs and torpedoes  
Of a harsh enemy.

"Wary Navy" most were,  
R.C.N. lads in blue —  
100,000 and Wrens  
And Merchant Navy, not few;  
They all toiled together  
Like good ship's crews do  
In "sweepers" and "four-stackers",  
Corvettes, frigates, too,  
Destroyers and launchers,  
Cruisers, carriers — not new.  
Through frustration, despair  
The Canadian Navy yet grew  
Midst turmoil and terror  
To a multitude from a few.  
To 400 ships in our Navy,  
400 Merchant Ships, too.

The East and the West,  
They gave of their best;  
These sea-faring sailors —  
the R.C.N.V.R., R.C.N.,  
Merchant Navy and the Wrens.

The translation into French was done by Henri Savard, RCNVR, regimental number V 44152 in February, 2000.

[English]

## UNITED NATIONS

### FUNDING ARREARS

**Hon. Lois M. Wilson:** Honourable senators, yesterday in the other place, a petition with 2,000 signatures was presented to draw attention to the perennial underfunding of the United Nations and actions that Canada might consider taking. Canada, of course, does pay its dues in full and on time. We have all heard criticisms of the United Nations, but if it did not exist we would have to invent it.

Canada's interest lies in a strengthened, reformed and well-funded United Nations. The core of the UN budget is one half of 1 per cent of the U.S. military budget and far less than the cost of one B-2 bomber aircraft. Yet, as of March 31, 2000, the total amount owed to the UN in U.S. dollars is \$842 million, with the U.S. share of arrears being 56 per cent of the regular budget; \$1.903 billion of the UN peacekeeping budget, with the U.S. share being 62 per cent of that figure, and all arrears, \$2.839 billion, with the U.S.A. share being 59 per cent of that figure.

In November 1999, legislation passed by the U.S. Congress came into effect, making repayment of U.S. arrears contingent on a number of conditions, seeking to force the UN to adopt policies that are contrary to decisions of the majority of its members, thus fracturing the process of multilateral decision-making. Multinational companies are also responsible parties, because many of them have financed negative campaigns against the UN and fought the efforts of the UN to establish global regulation of the environment and other matters.

What can Canada do? We can make this situation known. We can make diplomatic representations to states that withhold their UN dues to pay in full and on time. Canada might also give consideration to proposals that would establish alternate and reliable revenue sources for the UN with a view to presenting such proposals for consideration at the UN General Assembly.

## AFRICA DIRECT MISSION TO CANADA

**Hon. Donald H. Oliver:** Honourable senators, on Wednesday of next week, I will address a gathering of over 200 business and political leaders from Canada and the sub-Saharan region of Africa at the opening of the Toronto session of the Africa Direct Mission to Canada.

As you know, I am a strong supporter of the development of a solid relationship between Canada and many countries in Africa, particularly on economic and trade levels.

The Africa Direct Mission to Canada is an initiative to promote economic and political linkages between Canada and eight sub-Saharan African countries: Ghana, Mauritius, Mozambique, Nigeria, Senegal, South Africa, Tanzania and Uganda. Business and political leaders from these countries began arriving yesterday for a two-week visit to liaise with their Canadian counterparts in seminars and meetings promoting trade policy dialogue, trade development, and investment between our countries.

It is no secret that Africa is developing at an incredible rate. The World Bank has forecast a 4.2 per cent annual growth rate for sub-Saharan Africa during the next 20 years. According to a survey published in January by the Economist Intelligence Unit of London, England, sub-Saharan Africa will be the fastest growing region in the world this year, setting the pace for economic growth on a global level.

Africa is on the move and its future looks bright. Canadians can benefit by pursuing business opportunities in Africa. There is a lot of good business to be done.

With over 750 million people living in sub-Saharan Africa, this region, with its abundance of untapped natural resources, has the potential to become a major marketplace for Canadian business. Newly found political stability and economic reforms combined with an increased investment in people and technology have brought growth and progress to Africa. Yet, weaknesses in the infrastructures of these countries are creating a barrier to their continued growth.

Fortunately, this is an area where Canada can be of great assistance. These barriers create opportunities for Canadian companies to assist in the building and maintenance of new infrastructure systems, including improving access to telephones, satellite communications and Internet services.

In conclusion, honourable senators, increasingly so, Africa is a potentially huge market for Canadian businesses, thanks to recent reductions in trade barriers between Canada and some countries in the sub-Saharan region. Expanding trade is an important means of growth for both the African and Canadian economies. I urge all honourable senators to join me in supporting initiatives like Africa Direct Mission that promote global cooperation.

## ROUTINE PROCEEDINGS

### NATIONAL DEFENCE ACT

#### BILL TO AMEND—REPORT OF COMMITTEE

**Hon. Peter A. Stollery,** Chairman of the Standing Senate Committee on Foreign Affairs, presented the following report:

Thursday, May 4, 2000

The Standing Senate Committee on Foreign Affairs has the honour to present its

## EIGHTH REPORT

[Translation]

Your Committee, to which was referred Bill S-18, An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities), has examined the said Bill in obedience to its Order of Reference dated, Tuesday, April 4, 2000, and now reports the same without amendment.

Respectfully submitted,

PETER STOLLERY  
Chairman

**The Hon. The Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Stollery, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

• (1420)

## PAYMENTS IN LIEU OF TAXES BILL

REPORT OF COMMITTEE

**Hon. Lowell Murray,** Chairman of the Standing Senate Committee on National Finance, presented the following report:

Thursday, May 4, 2000

The Standing Senate Committee on National Finance has the honour to present its

## SIXTH REPORT

Your Committee, to which was referred Bill C-10, an Act to amend the Municipal Grants Act, has, in obedience to the Order of Reference of Monday, April 10, 2000, examined the said Bill and now reports the same without amendment.

Respectfully submitted,

LOWELL MURRAY  
Chairman

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

L'ASSEMBLÉE PARLEMENTAIRE  
DE LA FRANCOPHONIE

REPORT OF THE CANADIAN DELEGATION  
TO MEETING IN LIBREVILLE, GABON TABLED

**Hon. Pierre De Bané:** Honourable senators, pursuant to rule 23(6) of the *Rules of the Senate of Canada*, I have the honour to present to the Senate, in both official languages, the report of the Canadian Branch of the Assemblée parlementaire de la Francophonie, and the related financial report. The report deals with the meeting of the APF Committee on Education, Communication and Cultural Affairs, held in Libreville, Gabon, March 6 and 7, 2000.

[English]

## FOREIGN AFFAIRS

NOTICE OF MOTION TO AUTHORIZE COMMITTEE  
TO EXAMINE PERFORMANCE REPORT OF DEPARTMENT  
OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

**Hon. Peter A. Stollery:** Honourable senators, I give notice that on Tuesday, May 9, 2000, I will move:

That the Standing Senate Committee on Foreign Affairs be authorized to examine the Performance Report of the Department of Foreign Affairs and International Trade for the period ending March 31, 1999, tabled in the Senate on November 2, 1999 (Sessional Paper No. 2/36-71); and

That the committee report no later than March 31 of the year 2001.

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO EXAMINE  
EMERGING DEVELOPMENTS IN RUSSIA AND UKRAINE

**Hon. Peter A. Stollery:** Honourable senators, I give notice that on Tuesday, May 9, 2000, I will move:

That the Standing Senate Committee on Foreign Affairs be authorized to examine and report on emerging political, social, economic and security developments in Russia and Ukraine, taking into account Canada's policy and interests in the region, and other related matters;

That the committee submit its final report no later than June 15, 2001; and that the committee retain all powers necessary to publicize the findings of the committee contained in the final report until June 29, 2001.



## AGRICULTURE AND AGRI-FOOD

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Leonard J. Gustafson:** Honourable senators, I give notice that on Tuesday, May 9, 2000, I will move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 3:30 p.m. on Tuesday next, May 16, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

## PRIME MINISTER'S VISIT TO MIDDLE EAST AND PERSIAN GULF

### NOTICE OF INQUIRY

**Hon. Pierre De Bané:** Honourable senators, I give notice that on Tuesday next, May 9, 2000, I will call the attention of the Senate to the visit of the Prime Minister of Canada to the Middle East and the Persian Gulf from April 7 to 20, 2000.

Some Hon. Senators: Oh, oh!

## QUESTION PERIOD

### NATIONAL DEFENCE

#### AIRWORTHINESS OF SEA KING HELICOPTERS

**Hon. Gerald J. Comeau:** Honourable senators, my question is for the Leader of the Government in the Senate. I listened very carefully yesterday to his response to Senator Forrestall's questions regarding the helicopters. I think the minister is still missing the point.

We know that the Sea Kings have a good maintenance regime. The ground crews are at the top of their profession, as are all of our aircrews. A 35-year-old Sea King is checked on the ground and is found to be airworthy. It then embarks on a mission. Once it is in the air, anything can go wrong, and too often it does. Any aircraft that has ever crashed was airworthy enough to get off the ground.

I draw the senator's attention to the Iroquois Detachment Commander's report that I read into the record earlier.

I will summarize that report: Days at sea, 78; missions scheduled, 141; missions cancelled, 65. So 46.1 per cent of all missions were cancelled, 4 due to weather, 11 because of operations, and 50 due to the aircraft. That is 35.5 per cent of all missions. We are talking about a complete failure to even get off the deck.

Does the minister still want to talk about maintenance routine when, despite an excellent maintenance regime, the Sea Kings failed to fly 35 per cent of the time?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for that question and his interest in a very important topic, a topic shared by many senators, particularly those from Nova Scotia.

In responding to this question, I would say we had an interesting and, at times, lively debate yesterday with respect to a number of issues. In responding to his question, I want to point out that there are a number of issues on which we agree. The first issue upon which everyone agrees is that the Sea King is an old aircraft and that it is a priority for replacement. There is no disagreement on that issue since it has been expressed in this chamber by a number of senators on many occasions.

**Senator Lynch-Staunton:** Is that why you cancelled the contract?

**Senator Boudreau:** There is no dispute that the Sea King, as an older piece of military equipment, requires quite a large amount of maintenance and upkeep. Statistics have been given on that issue. No one has stood in this place, least of all myself, to say that was not correct. We have an older piece of equipment that does require a high level of maintenance.

• (1430)

However, I believe we parted company yesterday over a belief on the part of some that military personnel were being subjected to life-threatening situations in equipment that was absolutely unsafe and that we were putting military personnel at perilous risk of life and limb in this equipment. On that point, I disagreed, and I continue to disagree because I believe that the people who repair and service the craft and send it back into operation have integrity. The company that repairs and services the Sea Kings has integrity and its employees also have integrity. They believe that when that equipment goes back into service, it is fit and safe for the servicemen who will work in it. I know that because I have been to the plant and I have asked them that myself.

I also believe that military personnel who are in charge of operations and who assign people to go out on Sea King helicopters to perform tasks would not do so if they thought they were putting these lives in serious peril.

As I said yesterday, the minister continues to regard this as a top priority of his department. The equipment is old and needs a significant amount of maintenance. When individuals are sent on missions on this equipment, it is because that equipment is deemed to be able to perform that mission and not place those individuals in peril of their lives.

**Senator Comeau:** Honourable senators, Lieutenant-Colonel Lee Myrhaugen, former Sea King squadron commander on Shearwater, said on CTV news that Sea Kings can be certified as safe on deck, but 10 minutes into flight they become unsafe due to their age and unreliability. Those are not my words; they are his.

With all due respect to the Leader of the Government in the Senate, who wants to win a seat in Halifax in the next federal election, Lieutenant-Colonel Myrhaugen knows more about Sea Kings than either the minister or myself. Would the Halifax candidate go to the Prime Minister this afternoon and demand that the Prime Minister initiate the Sea King replacement project?

**Some Hon. Senators:** Hear, hear!

**Senator Boudreau:** Honourable senators, the honourable senator is absolutely right about one thing: The individual he references knows more about Sea King helicopters than I do. I do not know the Lieutenant-Colonel, but I think that is probably a fairly safe assumption to make.

I was not able to watch the lieutenant-colonel's comments, but I did pick up the newspaper this morning and read some comments made by Brigadier-General Colin Curleigh. You will recall he was referred to and quoted here yesterday by another honourable senator. His comments were disturbing. I had the impression — and perhaps it was not the correct impression and I misunderstood the purpose of the quote — that it was done to support a contention that people were being sent out on missions in equipment that was putting them in peril of their lives and that Brigadier-General Curleigh was supporting that belief and that opinion.

I read this morning in a Halifax newspaper a quote from Brigadier-General Curleigh wherein he said that they reviewed everything and came to the conclusion that it is almost time to say these helicopters are unsafe. However, looking at the total picture, they could not bring themselves to say that they are dangerous or that they are unsafe.

**Senator Lynch-Staunton:** What do you expect him to say? That is comforting.

**Senator Boudreau:** In fact, the point made in the story is that he signals a need to make the replacement a priority and to take action.

**Senator Lynch-Staunton:** What are you waiting for?

**Senator Boudreau:** In fact, when questioned yesterday about this very topic, the minister referred to the \$50-million refit of these Sea King helicopters. I gave more specific details in this chamber yesterday when I answered one of the questions with respect to that program. The minister lumped everything together and talked about the \$50-million upgrade and refit. I think that is a substantial measure toward maintaining this equipment so that it will not become unsafe while we are in the process of hopefully replacing them.

**Senator Comeau:** Given that the minister is quoting selectively, would he go on to read the rest of the article, where it indicates that the reason these gentlemen are holding back on their comments is because they do not wish to worry and place the families of the men and women who fly these helicopters in a situation where they feel that their loved ones are being sent into danger? That is the reason these honourable people held back somewhat. If the minister wishes to quote the article further, I

think it says that it is not a question of if but a question of when these helicopters will fall out of the sky.

**Senator Boudreau:** I think the honourable senator characterizes the situation in a fairly correct fashion. He says that unless something is done, at some point the Sea Kings will become unsafe. However, I do not see anywhere in this article, although there may have been other articles making that suggestion. I did not cut that part out; however, it does not appear in this particular article.

He is quoted a second time as saying, "We are not saying they are unsafe, but by God we are seeing more and more indications that we are reaching that point."

**Senator Lynch-Staunton:** That is reassuring.

**Senator Boudreau:** That is fine, but the issue here yesterday was whether the Government of Canada or the senior military was sending people up —

**Senator Forrestall:** The issue is safety.

**Senator Boudreau:** The answer, according to Brigadier-General Curleigh, is no.

**Senator Lynch-Staunton:** He said we are not there yet.

**Senator Boudreau:** To ensure that this day does not come, the government has embarked on the \$50-million program we spoke of in detail yesterday.

#### REPLACEMENT OF SEA KING HELICOPTERS

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, yesterday, the minister told us that he met yesterday morning with senior military personnel to go over the procedure to keep these aircraft as safe as possible, and he was to give us a list of their names. I wonder if he could provide us with those names today.

**Hon. J. Bernard Boudreau (Leader of the Government):** I will do so, honourable senators. The senior military personnel were directed to brief me on the program that I detailed yesterday at the instance of the minister, and out of courtesy I want to indicate to him that I will be giving those names to the Senate.

**Senator Lynch-Staunton:** The reason I ask, honourable senators, is because I suspect that the same people the minister met with yesterday might also have been there some years ago urging the government at the time to replace both the Sea Kings and the Labradors, the same people who supported the contract to buy 50 EH-101s and who urged that the Labradors and the Sea Kings then were unsafe. I suggest that was the reason the Government of Canada agreed to a major purchase of the EH-101s. This government, the 1994 government, cancelled the contract at a cost of well over \$500 million — in fact, close to \$800 million. Here we are seven or eight years later, no further ahead, with the same military personnel wondering why the Government of Canada is not following through and replacing the Sea Kings, which are deemed day by day, according to the quotation from *The Chronicle-Herald*, to be more and more unsafe.



**Senator Boudreau:** I will say that the quote I referred to indicated that this gentleman, a retired brigadier-general, indicated they were not unsafe.

**Senator Lynch-Staunton:** Yet.

**Senator Boudreau:** He was concerned. I do not think we will find a single person in uniform, or a single person here perhaps, who would not suggest that they want the Sea Kings replaced. That is not the issue. The issue was very important because yesterday in the Senate, an honourable senator was saying that military personnel are being sent out deliberately on equipment that is putting their lives in peril. That is a very important yet incorrect statement. Quite frankly, I do not see that statement supported, not even by the individual who was quoted.

• (1440)

**Hon. J. Michael Forrestall:** Honourable senators, the minister knows the issue. The file is on the Prime Minister's desk, to quote the Prime Minister, but it is not on the agenda. Will he put it on the agenda? In 1978, the Prime Minister of this country was a member of a government that recognized the need to replace the Sea King.

If the minister is well briefed, he will know that a Labrador aircraft went down over Northumberland Strait today and landed. I do not have any other news yet. Another one was forced into the position of having to land outside its mission.

In 1993, in a briefing note prepared by the Parliamentary Centre for Foreign Affairs stated that:

...the Sea Kings and the Labradors are old and safety measures are becoming increasingly difficult to guarantee.

The Prime Minister has the file. That plane is stable and safe as long as it is on the ground. Ten minutes in the air and only God has control over what happens to that plane, along with the gifts and talents of the men and women who fly them.

**Senator Boudreau:** Honourable senators, I have no difficulty delivering the message that the Honourable Senator Forrestall brings with respect to replacement. It is a message I can easily share, which has been indicated in the past.

**Senator Forrestall:** Will the government leader do something about it?

**Senator Boudreau:** It is a message that the Minister of National Defence has given personally on a number of occasions.

As the honourable senator will know, the Labrador helicopters are in the process of being replaced. Hopefully, that will be completed.

With respect to the Sea King, I would also say — and this information came by way of relative accident as opposed to any briefing session — that when I was reading the article to which I referred earlier, I happened to see that IMP Aerospace has landed

a large contract to maintain the U.S. navy's Sea King helicopter fleet.

**Senator Lynch-Staunton:** How old are they?

**Senator Boudreau:** I have no idea. However, this same company performs the maintenance and will do much of the \$50-million upgrade program on our Sea Kings. They have been awarded what I am told is the largest military contract ever awarded to a Canadian company. That expresses the confidence at least of the U.S. navy in the ability of that company to do very good work with respect to the Sea Kings.

**Senator Lynch-Staunton:** How old are their Sea Kings?

**Senator Forrestall:** Honourable senators, would the minister table the documents from which he quoted yesterday, together with the names asked for by the leader of our party?

**Senator Boudreau:** I have no difficulty tabling that document, honourable senators.

**Senator Forrestall:** The minister said yesterday that he would do it, but he did not.

**Senator Boudreau:** I do not recall discussing the tabling of any documents.

**Senator Forrestall:** The minister volunteered to do so — until he lost his cool.

**Senator Boudreau:** If the honourable senator wants the document, we will give him the document. I can do it, perhaps, by the end of today. However, failing that, the honourable senator will have it at the next sitting of the Senate.

#### REPLACEMENT OF SEA KING HELICOPTERS— CLEARANCE TO FLY AIRCRAFT IN UNITED STATES AIR SPACE— REQUEST FOR ANSWER

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the other day I asked if the minister knew whether the FAA in the United States of America permitted Canadian Sea King helicopters to fly in American airspace. Can the minister answer that question today?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I put that request forward and am awaiting a response. I have not as yet received an answer. I will forward the answer as soon as I receive it.

#### POSSIBILITY OF SUSPENSION OF ANTHRAX VACCINATION PROGRAM

**Hon. Michael A. Meighen:** Honourable senators, yesterday, in a delayed answer to an oral question I asked of the minister on April 13 as to whether the crew of the HMCS *Calgary* would be vaccinated with that suspect anthrax vaccine from the U.S., the government responded that the U.S. manufacturer's vaccine will be carried onboard the ship, but used only if the present threat level escalates. My question to the minister is twofold.



The anthrax vaccine must be given three times over six weeks initially, and then at six-, twelve- and eighteen-month intervals to ensure full protection. Can the Government of Canada guarantee that they will have 18 months' advance warning of a biological threat?

The government indicated that the vaccine manufactured by Bioport has not been banned for use in the United States. That may be so, but what we do know is that the U.S. Food and Drug Administration has questioned the credibility of the Bioport vaccine. If there are concerns about the credibility of this U.S. product, why are we not seeking an alternative vaccine from elsewhere, such as Great Britain, where I understand such a vaccine does exist?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the Senator Meighen for his question and his follow-up to the response supplied by the department. It will come as no surprise that I am not a medical expert either in the area of the anthrax vaccine or in any other area. I can simply convey the additional follow-up inquiries that the honourable senator has raised and, hopefully, provide him in due course with a response to both of his questions.

[Translation]

## HEALTH

### APPROVAL PROCESS OF PHARMACEUTICAL PRODUCTS— EFFECT OF DELAYS ON INVESTMENT BY COMPANIES

**Hon. Roch Bolduc:** Honourable senators, my question is for the Leader of the Government in the Senate. The pharmaceutical industry is a major industry in the province of Quebec, among others. It invests one billion dollars a year. This industry, thanks to the good policies of the Conservative government, managed to triple, from 1,000 to 3,500, the number of researchers in this area. It is an industry of the future.

The problem is the approval of new drugs, after the research stage, by the Department of Health. Mr. Marcheterre, chairman of the board for Canada's pharmaceutical research companies, indicated that it takes 600 days in Canada to evaluate a new drug, compared to 350 days in the United States and 200 days in France.

Why does it take so long in Canada? Delays ultimately have an impact. People lose patience and go elsewhere to develop their products. The evaluation must be done in an effective manner. Is it because health standards are higher in Canada? Are these standards higher in Canada than in France and in the United States? Is it that the department does not have enough

personnel to deal with these issues? Can something be done to improve the situation? The situation improved between 1986 and 1994. It has also improved since 1994, but it seems to me that a time frame of 600 days does not make sense.

[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, in responding to Senator Bolduc, I would be interested in knowing — and I ask very directly and I have no ulterior motive in knowing — whether the approval time changed over that period of time, has been increasing, or has always been at that level and we simply have not kept up with others. That would help me in terms of directing my honourable friend's inquiry to the appropriate authorities.

As the honourable senator will know, it is a question of balance. On the one hand, there is the protection of the public and those individuals who would be using these pharmaceutical products. On the other hand, that protection must be balanced with a need to bring a new and beneficial product to the potential patient as quickly as possible for the benefit of that patient, and also to allow the company to deal with these matters in an efficient, businesslike way. That balance must be struck. If we lean too much to one side, then I think we want to be on the side of protecting the public and the potential consumer. However, I will certainly take this issue up with the Minister of Health.

I am sure there are countries that approve some drugs in two weeks. We do not want to follow those examples. In terms of the major countries cited by the honourable senator and the comparison he made to Canada, I will ask for a response.

• (1450)

I would be interested in knowing if the honourable senator knows whether or not that circumstance in Canada has changed and whether our approval has increased, decreased or remained the same?

**Senator Bolduc:** I have stated before that it has improved in the last five or six years, perhaps 10 years, but the rate is still double what is happening in the United States and three times what is happening in France. I believe France is recognized as a country where the standard of public health is quite good.

Would the Leader of the Government in the Senate ask the minister to provide an explanation, and, second, if he can do something to improve the situation? Otherwise we will lose investments, and we all know that we need investments.

**Senator Boudreau:** Honourable senators, I certainly will undertake to the honourable senator to ask for an explanation on the comparison that he cites, and perhaps as well get other comparisons to countries with an acceptable process of drug acceptance. While I am pleased to see that the situation has improved over the last number of years, I will also ask whether the department has any plans presently to narrow that time frame even further.

## DELAYED ANSWER TO ORAL QUESTION

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on March 1, 2000, by Senator Oliver, regarding the transitional job fund grants to PLI Environment Ltd.

## HUMAN RESOURCES DEVELOPMENT

TRANSITIONAL JOBS FUND—  
GRANTS TO PLI ENVIRONMENT LTD.

*(Response to question raised by Hon. Donald H. Oliver on March 1, 2000)*

Regarding questions on why PLI Environment Ltd. was awarded "three times the amount requested" and how HRDC justifies the significant increase in the amount of the funds awarded:

- The increased assistance was requested by the company through an amended proposal for additional funds to increase the number of new sustainable jobs created from 50 to 125.
- The PLI project - Sydney Steel North End Clean-up — was recommended by the local advisory committee, the local MP and the Province of Nova Scotia.

The government cannot comment any further on this project as it is currently under investigation.

However, all projects have a degree of risk associated with them, particularly when we are trying to create jobs in areas with significantly high unemployment. Projects are approved in good faith that they will proceed as planned.

Getting people back to work so they can support their families — that is the government's priority and this is what it needs to focus on.

## ANSWERS TO ORDER PAPER QUESTIONS TABLED

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, pursuant to rule 25(2) of the Senate, I table replies to a series of written questions by Senator LeBreton, most of the responses being from the Minister of Human Resources Development.

HUMAN RESOURCES DEVELOPMENT—  
GRANT TO 10642 NEWFOUNDLAND LIMITED

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 1 on the Order Paper—by Senator LeBreton.

HUMAN RESOURCES DEVELOPMENT—  
GRANT TO 9057-5093 COMPANY

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 2 on the Order Paper—by Senator LeBreton.

HUMAN RESOURCES DEVELOPMENT—  
GRANT TO 904-30042 COMAPNY

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 3 on the Order Paper—by Senator LeBreton.

HUMAN RESOURCES DEVELOPMENT—  
GRANT TO 3393062 CANADA INC.

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 4 on the Order Paper—by Senator LeBreton.

HUMAN RESOURCES DEVELOPMENT—  
GRANT TO 9069-1049 QUÉBEC INC.

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 5 on the Order Paper—by Senator LeBreton.

HUMAN RESOURCES DEVELOPMENT—  
GRANT TO 9037-1956 QUÉBEC INC.

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 6 on the Order Paper—by Senator LeBreton.

HUMAN RESOURCES DEVELOPMENT—  
GRANT TO 3458121 CANADA INC.

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 7 on the Order Paper—by Senator LeBreton.

HUMAN RESOURCES DEVELOPMENT—  
GRANT TO 142968 CANADA LTÉE

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 8 on the Order Paper—by Senator LeBreton.

HERITAGE—VISIT OF MINISTER TO NEWFOUNDLAND

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 9 on the Order Paper—by Senator LeBreton.

NATIONAL CAPITAL COMMISSION—A PLACE FOR CANADIANS,  
A STORY OF THE NATIONAL CAPITAL COMMISSION

**Hon. Dan Hays (Deputy Leader of the Government)** tabled the answer to Question No. 10 on the Order Paper—by Senator LeBreton.



## ORDERS OF THE DAY

### CANADA ELECTIONS BILL

#### THIRD READING—DEBATE ADJOURNED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

**Hon. Donald H. Oliver:** Honourable senators, it has been clear for a number of years now that the restrictions imposed on third-party advertising, like those proposed in this and previous governments, infringe on the right of free expression as guaranteed by the Charter of Rights and Freedoms.

Honourable senators, the issue of limiting third-party advertising goes back to the Trudeau years and, indeed, before. I suppose it really started with the advent of television and the exorbitant costs associated with television advertising. From the late 1950s on, these costs became a source of increasing concern to everyone involved in politics, particularly at the federal level.

In 1964 the Committee on Election Expenses was set up to study the problem. The Barbeau commission, — so called after its chair, Alphonse Barbeau, recognized in its report that there was a need to impose greater controls on election spending. This was to be achieved, among other ways, by limiting the amount of money parties and candidates could spend on election advertising.

At the same time, the commission realized that restrictions would be effective only if all the actors in elections, including third parties, were covered by the same legislation. However, it was not until 1974 that the Canada Elections Act was finally amended. The amendments prohibited individuals and groups from incurring expenses to promote candidates or parties, except with the express permission of their agents, and then only within the limits set out by the law. Third parties were permitted to incur expenses, but only for the purpose of attracting support for their own views on policy issues or those of a non-partisan organization.

Human nature being what it is, people were quick to take advantage of the possibilities offered by the imprecise nature of the clause. Soon the Chief Electoral Officer was warning that what had begun as a restraint on third-party spending had turned, instead, into a growing loophole. Therefore, in 1983, the law was

again amended. The amendment effectively prohibited third parties from using their own resources to support or oppose candidates or parties during election periods. It is not surprising that the measure was soon challenged.

In 1984 the National Citizens' Coalition won its case. The Alberta Court of Queen's Bench ruled that the original 1974 clauses, as amended in 1983, prohibiting all independent election spending, were unconstitutional. They constituted an unjustified restriction on freedom of expression as guaranteed by the Charter of Rights.

Honourable senators, I should like to quote a short passage from the Lortie commission report.

The federal government decided not to appeal the judgement —

They are referring to the *Somerville* judgement.

— or to amend the law in a manner consistent with the Charter. Elections Canada decided not to enforce the law outside Alberta during the 1984 and 1988 general elections, even though the judgement was not binding on courts outside of Alberta. These decisions destroyed the overall effectiveness of the legislative framework for promoting fairness in the exercise of freedom of expression and of democratic rights during Canadian elections...

The gaping hole in our existing framework that this development presents for electoral reform is now widely acknowledged. Without fairness, we may continue to have a "free" society, but we would certainly diminish the "democratic" character of our society. The Charter couples these two dimensions. It is essential that both Parliament and the courts acknowledge this fundamental fact.

Honourable senators, those opposed to the limits put their arguments in the context of freedom of speech, the right of Canadians to participate in the most important of our democratic processes, and their right to be properly informed about the issues. For myself, I agree wholeheartedly that the election playing field should be level. At present, it is not, but with this bill the situation will not be any better. A maximum limit of \$150,000 for 301 ridings is a little ridiculous. That is approximately \$500 per riding. What is an organization or a group to do with \$500 today? I feel that section 350(2) should be amended.

Surely, honourable senators, you would agree that elections are a time of fundamental importance in our national life, and that the more information people have the better their chances of casting informed votes.

Let me again quote the Lortie report. I do so to underline for honourable senators that my intent is not to redesign the wheel. What I am saying here has been discussed and debated for a long time. On page 328 of Volume 1 of the Lortie report we read the following:



Given the centrality of fairness as a fundamental condition of equality of opportunity in the electoral process, the electoral regulatory framework must be rebuilt. This requires a law with provisions that promote fairness by limiting the election expenses of candidates and parties, by securing access to the broadcast media, and by also limiting, but not ruling out, the opportunity for other individuals and groups to spend independently of candidates and parties during the election period in ways that may directly or indirectly affect the election outcome for at least one candidate or party.

Three times now, in the *Roach* case, the *Somerville* decision, and the *Pacific Press/Nixon* ruling just two months ago in the British Columbia court, the courts have found punitive restrictions on third-party advertising to be unconstitutional.

Honourable senators, the government still has not got it right. For decades now, the federal government has been trying to regulate the activities of the so-called third parties and their activities during an election period. The government tries to legislate controls that limit what third parties can do to directly promote or oppose candidates and parties during an election. As I tried to say in my second reading address to the chamber, Bill C-2 still has it wrong. Bill C-2 did not heed the advice of the Lortie commission, and the bill does not heed the advice of academics who have spent long periods of time extensively studying the issue.

Honourable senators, it is my opinion, based on some 30 years of studying election law in Canada and being actively engaged as a legal director of six national elections campaigns, that if challenged Bill C-2 provisions respecting third-party advertising will once again be struck down as unconstitutional.

Permit me, honourable senators, to briefly give you the most recent judicial statements on the problem in Canada. It is from a case called *Pacific Press, a Division of Southam Inc. v. the British Columbia (Attorney General)*. This is a decision of the British Columbia Supreme Court filed by Brenner J. in Vancouver on February 9, 2000. In these actions the plaintiff challenged the constitutionality of the 1995 amendments to the Election Act, which limit the amount that third parties can spend during election campaigns and which impose certain requirements on those who first publish or report on election opinion surveys.

• (1500)

I do not have time in the eight minutes remaining to me to take you through the details of the decision, but I would like to quote a few salient paragraphs from Justice Brenner's decision. In paragraph 40, he concluded by saying the following:

I accept the evidence of Professor Johnston under cross-examination who testified that advertising by parties in the election campaign matters. I conclude that spending, particularly well crafted spending by candidates or political parties in election campaigns likely can have an effect on voter intention. However, I also conclude that, unlike party and candidate advertising, there is no evidence which would

allow me to conclude that third party advertising or spending has an impact on voter intentions.

Senator Hays and other honourable senators have relied heavily on some Supreme Court of Canada dicta in the *Libman* case. Justice Brenner clearly distinguished *Libman* in paragraphs 96 to 110 of his decision. At paragraph 103, for instance, he said:

A lower court is not bound to a previous Supreme Court of Canada authority in circumstances where the lower court is satisfied that evidence contrary to the evidence upon which the purportedly binding authority was based is available in the case at bar.

The essence of the problem, honourable senators, is this: The Lortie commission, of which Senator Pépin and I were members, commissioned, through Professor Peter Aucoin, a series of research papers designed to show the effects that third-party advertising can have on an election campaign. In the *Libman* case, the courts relied on the Lortie commission's findings and Professor Aucoin's testimony at trial with respect to the impact of third-party spending. The Lortie commission and Professor Aucoin in turn relied on Professor Hiebert's research paper on the subject in which she relied on Professor Johnston's preliminary findings following his study of the 1988 elections. It is clear from the evidence that the Lortie commission itself relied on Professor Johnston's preliminary findings.

Here is the significant turning point: Professor Johnston no longer stands behind those preliminary findings. Accordingly, the conclusions of the Lortie commission on this issue can no longer be said to be based upon empirical findings. As well, of course, Professor Johnston's later publication entitled "Letting the People Decide," was not available to the court in the *Libman* case. Justice Brenner said that the case before him had a different set of facts from what was before the court in the *Libman* case. Hence, in his view, the Supreme Court of Canada's decision in *Libman* is not dispositive of the issues before him.

Justice Brenner made the following finding:

Professor Peter Aucoin is a professor of political science at Dalhousie University. He was also qualified as an expert in the field of political science. He testified for the AGBC. Professor Aucoin was the research director for the Royal Commission on Electoral Reform and Party Financing (the "Lortie Commission"). He also gave expert evidence at the trial in *Libman*.

Professor Aucoin testified that the Lortie Commission's third party spending recommendations were premised on the belief that third party advertising had an effect on voter intentions and it relied on the Johnston 1990 memo for that conclusion. Both Professor Aucoin and Professor Frederick Fletcher, who was also qualified as an expert witness and who testified for the AGBC, agreed that Letting the People Decide is the most sophisticated study of its kind to date. They agree that Professor Johnston's conclusion from that study was either that third party spending had no effect or that at least no effect had been demonstrated.

I accept the evidence of Professor Johnston under cross-examination who testified that advertising by parties in election campaigns matters. I conclude that spending, particularly well crafted spending by candidates or political parties in election campaigns likely can have an effect on voter intention. However I also conclude that, unlike party and candidate advertising, there is no evidence which would allow me to conclude that third party advertising or spending has an impact on voter intentions. Professor Aucoin examined indicators such as party turnovers, voter turnout and similar indicia of competition. He determined that Canadian federal elections had been fair over the past 20 or 30 years during a period of time where there was effectively no restriction on third party spending.

In summary the experts who testified at trial agreed that there is no empirical study or evidence that third party spending has ever impacted on a referendum campaign or an election campaign in Canada. They also agreed that the only empirical studies or evidence on this subject demonstrate that third party spending either has no impact or at the very least that no impact can be demonstrated. In the result I find that there is no empirical evidence that third party spending during election campaigns has in the past affected voter intention in Canada.

Honourable senators, every democracy has its own peculiar way of dealing with third-party advertising. In France, no political advertising is allowed by anyone in newspapers, or on television or radio during the electoral periods. In Great Britain, third parties can only advertise in newspapers during national elections. They are forbidden, as are regular parties, from advertising on the radio or television. In Germany, third-party advertising is almost non-existent, apparently by common consent. In the United States, of course, there are virtually no limits on third-party or soft money spending.

Somewhere in here is the happy median which Canada should adopt. By "happy median" I mean a policy which has fairness as its central tenet.

#### MOTION IN AMENDMENT

**Hon. Donald H. Oliver:** Honourable senators, I therefore move, seconded by Senator Murray:

That Bill C-2 be not now read a third time but that it be amended, in clause 350, on page 144, by replacing line 6 with the following:

"(2) Not more than \$4,000 of the total".

**Senator Kinsella:** Good motion!

**Some Hon. Senators:** Hear, hear!

**The Hon. the Speaker *pro tempore*:** It was moved by Senator Oliver seconded by Senator Murray:

That Bill C-2 be not now read a third time but that it be amended, in clause 350, on page 144, by replacing line 6 with the following:

"(2) Not more than \$4,000 of the total..".

Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker *pro tempore*:** Is the house ready for the question?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to speak to the amendment, if I may.

I listened carefully to Senator Oliver and his well-organized and well-researched presentation, which, essentially, is in support of an amendment to Bill C-2, respecting the election of members of the House of Commons. I do not want anyone to be confused. One senator opposite thinks I might have the wrong bill, but I am quite sure I have the right one. When I am finished, I am sure you will all agree that this amendment is not one which should be supported.

Honourable senators, I listened to Senator Oliver's amendment with care. I will try to be as brief as I can be. It is an oversimplification, but I think that the foundation for the amendment is —

**Senator Kinsella:** Solid!

**Senator Hays:** — the case of *Pacific Press, a Division of Southam Inc. v. British Columbia*, a judgment of Justice Brenner on February 9.

• (1510)

This judgment seems to be based on a very important finding. Without having read the case, I will admit, but with Senator Oliver's very thorough and comprehensive description of the judgment, its basis and the quote from Justice Brenner, it is founded on a finding that third-party advertising has no impact on voting intentions. In its most logical conclusion, that would support an amendment eliminating any spending limits, which is, of course, the case we have now in that the previous restrictions on spending have been struck down as they were contained in the previous act we are now revising.

In any event, I am very pleased that Senator Oliver agrees that spending limits are appropriate. His thrust is to make them more generous than as provided for in this bill.



The other side of this issue is, of course, the *Libman* case, which is based on a different premise. If the Supreme Court of Canada — the higher court, I note — was of the view that third-party spending or third-party advertising had no impact on voting intention, I suspect that their judgment would have been in accord with that premise. I am not sure what it would have been, but I observe that Canada's highest court has made a judgment I believe premised on the fact that third-party spending does have an impact and, accordingly, that there should be some limit.

Of course, Senator Oliver agrees. It is just that we are not in agreement on the limit. The bill says \$3,000 per riding, and Senator Oliver says \$4,000 per riding.

Just to go over the basis for the rationale of the limit in the act, I would to make reference to *Libman*. The court has used the words "highly laudable objective" in terms of providing for spending limits.

Having supported the idea of spending limits — and I have given my reasons why — the *Libman* case would have a different result than the *Southam* case. Based on the finding of whether third-party spending affects voting intention, the court accepts that spending limits are appropriate and states that for spending limits to be fully effective, such expenses should include not only those incurred by political parties and candidates, but also those incurred by independents, individuals and groups unrelated to the parties and candidates.

The highest court has said that the question then becomes one of balancing the interests between the parties and third parties in terms of the appropriateness of the spending limit of \$3,000, as provided for in clause 350(2) of Bill C-2. I am advised in my briefings on this bill that this determination is based on what other political parties spend and what is appropriate in terms of a balanced approach. In limiting third-party spending, we must bear in mind many third parties may be spending on an election, as well as the political parties who are spending as parties and whose individual candidates are spending as such in the various ridings.

With reference once again to the *Libman* case in support of the provisions of Bill C-2, while we recognize their right to participate in the electoral process, independent individuals and groups cannot be subject to the same financial rules as candidates or political parties and be allowed the same spending limits. Although what they have to say is important, it is the candidates and political parties who are running for election. Limits on independent spending must therefore be lower than those imposed on candidates or political parties, otherwise, because of third parties numbers, the impact of such spending on one of the candidates for political parties to the detriment of the others could be disproportionate.

The court did not decide the issue, but in looking at Bill C-2 and the evidence that was heard by the committee, we observed that the national limit is \$150,000. I shall start with that because the \$3,000 or \$4,000, as Senator Oliver would prefer, is a

function of that limit. The \$150,000 national limit would provide for national expression by allowing third parties to place ads in national and local print media.

The limit, it seems to me, in the view of the drafters of this bill and as provided for in the bill — and I support it fully — is that this is the appropriate amount in terms of achieving a balance. A \$3,000 limit would be a considerable amount given the fact of how much is spent by candidates in a riding in an election year on average. In the 1997 election, the average actual expenditure on advertising by candidates was \$13,600, as was presented to the committee by the Chief Electoral Officer.

I put it to you, honourable senators, that the total amount, if divided by 301, would not be very much. However, third parties are prone to targeting ridings. The \$3,000 amount is certainly within the amount that balances what candidates have to spend during election with the amount that they have to deal with in terms of third parties dealing with an issue or dealing with their party, bearing in mind that they might be facing two or three third-party spenders in the riding.

I would urge honourable senators not to support the amendment proposed by Senator Oliver. I believe the evidence he presented on the Lortie commission report and how that has evolved is very helpful, but the major distinction is one that has a court basically ignoring the effect of third-party spending and one — and it is the higher court — not ignoring it, indicating that the legislature is entirely within its power. In fact, it has a responsibility to look at third-party spending. The product of that exercise and the legislative result is Bill C-2.

I do not intend to talk about other matters relating to Bill C-2 because there may be an opportunity, if there are other amendments, for me to deal with other aspects of it. I will confine my remarks to the principal issues raised by Senator Oliver, which culminate in his amendment increasing between one quarter and one third the amount that a third-party may spend in a given riding.

Honourable senators, I might add a personal observation, which may be unnecessary and unwise to do. However, if there is no impact by third parties spending in an election or on an issue in a referendum — and if that is Professor Aucoin's view, and I believe he is quoted in the book by Mr. Fletcher, *Letting the People Decide* — I am very puzzled as to how that conclusion could be drawn. The fact that third parties do spend is empirical evidence that they believe, at least in their own minds, that their spending does have an impact. Perhaps it is just a matter of perception but, as we all know, perceptions are important.

• (1520)

We must also consider the perceptions of candidates seeking office and the parties who sponsor them. They may run candidates in a field where third parties have an unlimited right to spend simply because someone formed an opinion that spending has no impact, and the B.C. Supreme Court agreed. That is a very unsatisfying perception for one out on the hustings.



Senator Oliver probably agrees, or he would have worded his amendment to eliminate all spending. He did not do that. His measure is much less encompassing. There is not a great deal of difference between the two amounts.

I urge honourable senators to support Bill C-2 as currently drafted, including clause 350 as currently structured with a limit of \$3,000 per riding.

Honourable senators, I may have an opportunity to comment further later. I recommend to honourable senators that we not support the amendment proposed by Senator Oliver.

**Senator Oliver:** Honourable senators, I wonder if Senator Hays would entertain a question?

**Senator Hays:** Yes.

**Senator Oliver:** The cases of *Roach*, *Somerville* and *Pacific Press*, among others, have all been found by Canadian courts to be unconstitutional because they infringe the rights afforded Canadians under the Canadian Charter of Rights and Freedoms. Can the honourable senator tell this chamber what material changes in language are made in Bill C-2 to prevent it from being struck down for the same reasons and on the same grounds as *Roach*, *Somerville* and *Pacific Press*?

**Senator Hays:** Honourable senators, that is a good question. I have a good answer. *Roach*, *Somerville* and some of the other cases, perhaps all of them, are decisions of the Alberta Court of Appeal. It is not so much the wording of the clause in Bill C-2 that matters as the judgments of the Supreme Court of Canada made subsequent to those findings.

It is also interesting to note that those decisions at the appellate level were not taken to the Supreme Court of Canada. One might speculate that, had they been appealed, different decisions might have been handed down. Those decisions found unconstitutionality not in the cases but in provisions of previous election acts. The *obiter dicta* of *Libman* is the most important difference between then and now.

**Senator Oliver:** Honourable senators, *Libman* was expressly distinguished by Justice Brenner in the *Pacific Press* case.

**Senator Hays:** Honourable senators, if I could treat that as a question, Justice Brenner was required to distinguish it. The honourable senator explained why he distinguished it.

If I understood the honourable senator correctly, the judge relied on Fletcher and Johnston and Aucoin in saying that third-party advertising has no impact on voting intention. That is an oversimplification, I know, but that is the main basis. That was not so in my view nor, as I explained earlier, in the position of the Supreme Court of Canada.

On motion of Senator Atkins, debate adjourned.

[Translation]

# **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Jean-Robert Gauthier:** Honourable senators, I rise as a Senator for Ontario and a Franco-Ontarian by birth to take part in today's debate on Bill C-20, commonly known as the clarity bill.

Coming up shortly to 30 years as an MP and senator, I am well aware of the respective responsibilities of the two Houses comprising the Canadian Parliament: the House of Commons and the Senate.

I have always worked to defend the rights of official language minorities in this country. In my own way, I have made a contribution to the implementation of measures aimed at ensuring that all Canadians have the right to live and to educate their children in the official language of their choice anywhere in this country.

In creating the Senate, the Fathers of Confederation wanted to ensure equitable representation for the regions of the new country of Canada within the Canadian Parliament, as a counterbalance to the representation in the House of Commons, which was, as you know, going to reflect demographic concentrations. That is why it was decided that an equal number of senators would come from the four regions of the country as designated in 1867.

Historically, the Senate was also intended to assume responsibility for defending the minorities of this country. The Senate's dual role as guardian of regional interests and of minority rights has been confirmed in two decisions by the Supreme Court of Canada, in 1980 and in 1981.

• (1530)

It is in that dual role of defender of Canada's francophone minorities and representative of the minority in Ontario that I speak today on a matter dear to my heart, one which has been of concern to me ever since I started in politics.

Bill C-20 on the clarity of a potential referendum question on the secession of Quebec and of the results of such a referendum is the response by the Government of Canada to the opinion of the Supreme Court of Canada on the Reference regarding the Secession of Quebec. The government put three clear questions to the Supreme Court, which replied clearly. I am not indifferent to the arguments put forward by the Supreme Court in its August 20, 1998 opinion and I think that this opinion could serve in any move to secede within the country. What concerns me is the effect of any secession within my country, which I would hope is indivisible, but primarily, it is the secession of Quebec and its consequences on the francophone minorities of the country.

I say right off that I believe, as the Minister of Intergovernmental Affairs put it so well in his brief to the committee studying the bill, that:

It is reasonable for the Government of Canada to not consider negotiating secession unless a clear question on the secession was first put;

It is reasonable for it to not undertake to negotiate the break-up of the country on the basis of an uncertain majority; and

It is reasonable as well for the Government of Canada to be unable to negotiate secession other than in a legal context, in this case by complying with the opinion of the Supreme Court of Canada in its entirety.

I should like to raise two points I consider very important with respect to the bill as passed in the House of Commons on March 15: first, the cameo role of the Senate in the referendum process and, second, the lack of importance accorded the linguistic minorities in this country.

On the first point, Bill C-20 accords the House of Commons alone the right to decide on the clarity of the question and of the results of some future referendum on the secession of Quebec. It excludes the Senate from any decision. There is talk of consultation, but we know what that means.

However, such an approach goes against Canada's bicameral parliamentarism, which recognizes the obligation to consider the majority consent of both Houses of Parliament, the House of Commons and the Senate, before binding the Canadian government in law. In fact, Bill C-20 reads as follows, just after the *whereases* and just before clause 1:

Now, therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts...

That statement, coming just before the clauses of the bill, confirms that, in the Canadian parliamentary system, any measure that legally binds the Canadian government must get the consent of the two Houses of Parliament, that is the Senate and the House of Commons.

It seems that the drafters of Bill C-20 gave a very restrictive interpretation to the expression "political actors," which is used a few times by the Supreme Court in its opinion on the reference relating to the secession of Quebec. Paragraph 153 of the reference reads as follows:

...it will be for the political actors to determine what constitutes a clear majority on a clear question in the circumstances under which a future referendum vote may be taken. Equally, in the event of demonstrated majority support for Quebec secession, the content and process of the negotiations will be for the political actors to settle.

The Canadian Constitution provides that there are political actors in both Houses of Parliament, since a majority of the members of these two Houses must vote in favour of any decision that binds the Canadian government. If it passes this bill, the Senate will exclude itself from the referendum process, when it has a role to fulfil as protector of the regions and of the minorities. What would happen if, during a referendum campaign, the Supreme Court ruled that the House of Commons cannot, alone, bind the Canadian government regarding the referendum question or its outcome? One can imagine the impasse that this would create. If it was the intention of the drafters of Bill C-20 to reduce the role of the Senate, then a formal constitutional amendment was required, as provided under the Canadian Constitution.

In my view, Bill C-20 assigns to the Senate a mere consultative role by stipulating in paragraphs 1(5) and 2(3) that:

The House of Commons shall take into account...any formal statements or resolutions by the Senate.

Such a provision places the Senate on a list of minor players who could give their opinion on the question and whom the House of Commons will have to consider, a list which includes the political parties of the secessionist province, the government or legislative assembly of any province or territory of Canada, and representatives of the aboriginal peoples of Canada. Recently, the government officially guaranteed representatives of the aboriginal peoples that they would be invited to the negotiating table, if there were a clear question and a clear answer. Obviously, I have no objection to aboriginals being invited. Why did it occur to no one that there were francophones in every province of this country who expect to be defended by someone? By whom? The majority in the House of Commons? There is nothing to guarantee that that majority will continue to be reasonable and understanding. There is nothing to guarantee that the majority in the House of Commons will be sympathetic to the francophone minority or to the French fact in Canada.

This is an important issue for me. I think that the bill should be amended in committee to include Canada's linguistic communities represented perhaps by the group known as Alliance Québec and the Fédération des communautés francophones et acadienne, which is working on behalf of all French-speaking Canadians living in other provinces.



In my view, Bill C-20 assigns to the Senate a mere consultative role, but we will not be there to protect the interests of the regions or of minorities. Bill C-20 excludes us.

My second point, honourable senators, concerns the lack of reference, once again, to linguistic minorities in Bill C-20. Demands from aboriginal peoples enabled Mr. Fontaine to obtain a guarantee from the government for First Nation representatives to be invited to the negotiating table. I still wonder what the fate of Canada's francophone and Acadian communities will be, if Quebec did secede. Would their fate not be equally affected and should their input not also be taken into consideration in the entire Quebec referendum process? As we know, French-Canadians constitute a minority in Canada, a minority that is largely concentrated in Quebec. There are 6.5 million French-speaking Canadians living in Quebec and there are another million francophones outside Quebec. I do not need to draw a picture to illustrate our locations: we are 500,000 strong in Ontario and 275,000 in New Brunswick, in Acadia.

• (1540)

In my opinion, Quebec is essential to the survival of the Canadian francophonie. If Quebec broke away from Canada, what would happen to the French fact outside Quebec? I ask this question honestly. What would happen to the Acadians? What would happen to the francophones living in Alberta or Saskatchewan? They think that their country is indivisible, as I do, and believe they have the right to raise their children, their families, anywhere in this country in the language of their choice.

Honourable senators, there are 6.7 million Canadians in this country whose mother tongue is French, 5.7 million of them in Quebec, which leaves about one million more in the other provinces and territories of this country. In relative weight, according to 1996 statistics, 86 per cent of Canada's francophones live in Quebec and 14 per cent elsewhere in Canada. Do these one million francophones not deserve to have Parliament ask their opinion on the potential secession of Quebec and take it into consideration?

I ask this as a Franco-Ontarian senator. There are two of us, Senator Poulin and myself, appointed to represent, here in the Senate, the francophone minority of my province, Ontario. I was born here, I was raised here, and I will keep on living here for a little while longer, perhaps.

Honourable senators, I will use an expression that was used in 1982. I was told I should be reasonable, I am. Section 1 of the Constitution Act, 1982, provides that rights and freedoms are subject to reasonable limits. If I am to be reasonable, why am I told in section 23, and I quote:

...the number...is sufficient...

The provisions in sections 1 and 23 are incompatible, and I believe, honourable senators, that it is unacceptable nonsense. The blind, the disabled, the deaf are not counted. Canadians are

simply given rights in a Constitution, which, I acknowledge, is important for us. For heaven's sake, stop counting us. It makes no sense.

I also want to say that it is reasonable for the Parliament of Canada to receive and accept recommendations by members of the francophone and native communities of this country. Good grief! We are going to continue to live here and we will not break up my country in order to threaten this Canadian experience! This experience of bringing two different linguistic communities with their different histories together under one roof is one of the first in the world.

I hope that a referendum will never be held, but if one were and it threatened the future of my country, I would want someone to stand up and speak on behalf of the official language minorities. These minorities have struggled to retain their culture, their heritage and their constitutional right to speak English or French.

I will conclude, honourable senators, by saying that I will not fight Bill C-20. I will abstain. I am going to try to convince the members of the special committee struck to study Bill C-20 to pass an amendment permitting the country's official language minorities to have their say, should a province secede.

**The Hon. the Speaker *pro tempore*:** Honourable senators, the time allowed is up. Is leave granted to continue the debate?

**Hon. Senators:** Agreed.

**Hon. Lowell Murray:** By way of a question for my friend, the honourable senator, I would simply like to put forward a clarification on the role of the First Nations in the negotiations on the secession of a province. I believe I heard the honourable senator say that the government had made a commitment to give the First Nations of Quebec a place at the negotiating table.

Unless I am mistaken, Chief Fontaine proposed three amendments. The government approved the two amendments requiring the House of Commons to take into account any formal statements or resolutions by the representatives of the aboriginal peoples of Canada in considering the clarity of a referendum question and whether there was a clear majority.

With respect to the issue of a place at the negotiating table, unless I am mistaken, the government explicitly rejected an amendment along these lines. The aboriginal peoples of Quebec have not been guaranteed a place at the negotiating table.

[English]

**Senator Gauthier:** I am surely not an expert on what was said between Mr. Fontaine and the government. What I have been reading and hearing is mostly from the press. If my understanding is correct, Senator Murray is accurate in his interpretation. However, if the native people of Canada and the First Nations are to be involved in the clarity of the question, why are the language minorities not also involved in the same process?



**Senator Murray:** I should have said that I agree completely with that point.

[Translation]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Would Senator Gauthier care to give his views on the very important issue of the protection of linguistic minorities, which is one of the primary roles of the Senate of Canada. It is understandable that the House of Commons plays another role, given the dynamics of politics — an election must be held every four years.

Does Senator Gauthier agree that it is very important that senators be able to find a solution to an oversight in the present bill? We must enhance the role of the Senate of Canada and exercise our responsibilities and our obligations with respect to the protection of linguistic minorities.

[English]

• (1550)

**Senator Gauthier:** Honourable senators, I am not asking that our role be increased. I just want it to be maintained as it has been since 1867. That is to say that, as a senator, whether they like it or not, I am a political actor, just as the Supreme Court of Canada has said.

**Hon. Senators:** Hear, hear!

**Senator Gauthier:** Honourable senators, perhaps I should not say what I am about to say. However, I strongly believe that my purpose here is not to try to please everyone all the time in order to get elected. I am here to do something important in Canada, that is, to apply the fundamental respect of minority rights which we have enshrined in our Constitution.

**Hon. Senators:** Hear, hear!

[Translation]

**Hon. Fernand Roberge:** Honourable senators, I take this opportunity to congratulate Senator Gauthier on his excellent speech.

Honourable senators, several of my colleagues here have pointed out the dangerous inaccuracies and inconsistencies found in Bill C-20, which is said to bring clarity to the interpretation of a future Quebec referendum.

I will restrict my comments to a few remarks on the political context and consequences of this unfortunate and ill-advised initiative.

Since 1993, Prime Minister Chrétien has constantly been repeating that Canadians are no longer interested in constitutional debates, and I agree with him on that point.

Polls regularly show that even the *indépendantistes* are not interested in another referendum battle.

The new generation of Quebecers in particular wants to turn the page on the endless and sterile debates their elders have held for over 30 years.

Why then are we being asked today to support a parliamentary measure whose only immediate results will be to provoke those who are in favour of separation, to seriously perturb many federalists and, in the longer term, to help a separatist government achieve its objectives?

Like all Quebecers who were at least 18 in 1980, and I think that includes everyone here, I experienced two referendums on Quebec's future in a span of 15 years. This is more than enough for one generation.

The last referendum was won by the federalist forces by a very narrow margin. It was won much more because of Jean Charest's powers of persuasion than because of the Prime Minister's.

Now, barely five years later, the same government that led us to the brink wants to force us to engage in an abstract debate on the mechanics of another referendum.

I recall very clearly the commitments made by Prime Minister Chrétien immediately after the 1995 referendum, in particular his statement in Verdun on October 24:

...any change in Quebec's areas of constitutional jurisdiction would be made only with the consent of Quebecers.

I do not, however, recall Prime Minister Chrétien promising that he would get a bill passed which would, to all intents and purposes, put Quebec democracy under guardianship.

That is what the bill we are being asked to pass today would do. How did we get to this point?

The government claims — and this is reflected in the very title of the bill before us — that the Supreme Court imposed a "requirement for clarity" on it. What we are in fact dealing with here is:

An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

I will pass on the term "secession", which does not appear in either the program of the Parti Québécois or the standard *indépendantiste* vocabulary — and most particularly never in any referendum ballot.

I will merely remind honourable senators of the wise words of Senator Rivest:

Everyone needs to clearly understand that, independent of the existence or non-existence of this bill, whether we like it or not, whether we pass it or not, if there is another referendum in Quebec...it will be on article 1 of the Parti Québécois program, which calls for the sovereignty of Quebec coupled with an association or partnership with Canada. This bill tells Canadians that partnership cannot be mentioned, because the referendum question would not be clear.

If the court was obliged to address a question that virtually no one had asked, it is because the government of Mr. Chrétien asked it to, in September 1996, a little more than a year after the referendum, when all Canadians, particularly Quebecers, were hoping for constitutional peace.

The government put three questions to the Supreme Court:

First, under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?

Second, does international law give the National Assembly, legislature or government of Quebec the right to effect the secession of Quebec from Canada unilaterally?

Third, in the event of a conflict between domestic and international law on the right of the National Assembly, legislature or government of Quebec to effect the secession of Quebec from Canada unilaterally, which would take precedence in Canada?

The court answered these questions to the best of its ability, and the government drew the conclusion that it had to give effect to the opinion of the court through a bill. However, is that what the court wanted?

No one, in my opinion, is in a better position than the person who headed the Supreme Court when it decided on these questions in order to enlighten us. Here is what the former chief justice Antonio Lamer said in January 2000, only four days after his retirement, in an interview in *Le Devoir*:

A distinction must be made between a decision and an opinion. The reference on the secession of Quebec, like all references, is simply an opinion. Neither Quebec nor Canada is obliged to act on our opinion.

We are a long way from a "requirement". The real "requirement," in fact, is the one Mr. Chrétien and his Minister of Intergovernmental Affairs, Stéphane Dion, imposed on the Supreme Court, and to which we in turn are being subjected. This "requirement" is political, it is neither legal nor constitutional. The requirement is mentioned in the bill, not in the opinion of the court.

The "clarity" the court attempts to provide and Bill C-20 draws on is diffuse, to say the least. Here is what the court said on the subject of potential negotiations on secession:

It would be for the democratically elected leadership of the various participants to resolve their differences.

One will have guessed. Bill C-20 does not define a "clear majority" and a "clear answer."

What is all too clear, unfortunately, is that if a referendum were held on Quebec's separation, the question would be examined by the Parliament of Canada within a specific and limited period, and it would even take precedence over another proposal to improve the Canadian federation, which is also not a "requirement" from the court, but a government decision.

This is not least of the absurdities found in Bill C-20. The period and the process involved with respect to separation would not apply if, for example, a province — and why not Quebec someday? — were to hold a referendum on improvements to the Canadian federation.

In other words, Bill C-20 puts separation on a fast track, while putting the renewal of our federation on a shelf.

Therefore, the real beneficiary of this bill is, unfortunately, none other than the leader of the separatist forces, Quebec Premier Lucien Bouchard. He himself realized his luck when the government decided to drag the Supreme Court into the political arena. Here is what Mr. Bouchard said in August 1998 regarding the Supreme Court opinion:

The federal justices are saying and repeating that after a yes vote, Canada will have an obligation to negotiate with Quebec. That obligation eliminates the uncertainty that existed in the minds of many Quebecers because of the refusal of the federalists to negotiate. These Quebecers are now reassured: their yes vote will force Canada to negotiate.

[English]

The sad result of Bill C-20 was made only too clear yesterday morning in an article published in *The Globe and Mail* in which Quebec's Intergovernmental Affairs Minister Joseph Facal was quoted. The headline reads, "Clarity Act helps sovereigntist cause, Quebec minister says." In the article, Mr. Facal is quoted as having said that the bill could be a secret legal weapon for the separatist cause.

[Translation]

Such is the sad result of the government's action. Mr. Bouchard and his ministers are pleased to see that the conditions to achieve independence are now theoretically easier, because of the policy adopted by the Canadian government.

Mr. Bouchard also said recently that the so-called "winning conditions" he was waiting for to hold another referendum are now all there. Was Bill C-20 the last "winning condition"?



It so happens that Mr. Bouchard made that statement in Paris. That is certainly not a coincidence. We all know that Mr. Bouchard counts a lot on being recognized by the international community, and particularly France, to justify any future action to take Quebec out of the Canadian federation.

The fact is that Mr. Bouchard will soon be in a position to reassure foreign officials. Quebec's separation is no longer illegal. There will be an act of Parliament, which will facilitate negotiations. Some result! Bill C-20 gives more clarity to the separatists' project.

• (1600)

Mr. Chrétien is obviously very proud of having come up with the idea of Bill C-20. He even views this initiative as one of the great successes of his government, but whether the senators across the way like it or not, Mr. Chrétien will not be Prime Minister of Canada forever. His legacy will live on, however, and Bill C-20 will tie the hands of all his successors. Let us not forget that there will still be separatists in Quebec.

Certain senators scoffed at the Right Honourable Joe Clark when he made the following statement before the House of Commons committee:

Without Bill C-20, the Government of Canada could consult, delay, negotiate, hold its own national referendum, and employ all the other instruments of ingenuity and ambiguity by which previous governments in previous crises have kept this country together.

Today, I ask these same senators to remember what Prime Minister Trudeau did when René Lévesque's government decided to hold a referendum on sovereignty-association in 1980. Did he rush to introduce a bill in the Parliament of Canada setting out the process for negotiating sovereignty-association? No. Here is what Mr. Trudeau said at the time:

I do not have a mandate to negotiate separation.

Bill C-20 does not give us clarity. It takes away our flexibility. There will now be a special law of Parliament setting out a specific timetable and procedure for secession. Bill C-20 makes one thing clear: Thanks to the Parliament of Canada, the road to the breakup of Canada has been mapped out.

A number of senators before me were critical of the meagre role Bill C-20 assigned to the Senate in a circumstance as serious as the possible breakup of the country. I wish to remind senators that the historic role of the Senate, as defined by the Fathers of Confederation and exercised by the generations of men and women from various parties who preceded us here, is to stand up for the rights of the provinces and of minorities. And now that

the government is claiming to be able to meddle in the conduct of a provincial referendum, this role has never been more important. As Senator Lynch-Staunton quite rightly pointed out:

Not only, however, is Bill C-20 giving the House of Commons the right to disallow a vote of a provincial legislature, even a unanimous one, but also it allows a majority popular vote in a referendum to be nullified.

According to the time frame proposed by Bill C-20, the Parliament of Canada would discuss the validity of the question — before judging the validity of the response — at the very time that Quebecers would be involved in the referendum process. What, in the logic of Bill C-20, will the members of Parliament from Quebec in the government party be doing during the referendum? Will they be refusing to make a decision because they are too busy looking at the question? Will they vote even if they do not approve of the question? Will they suggest that their federalist fellow citizens abstain? Lucien Bouchard would never go that far?

According to Bill C-20, the government is committed to taking our opinions and resolutions into account, as it will those of the provinces. This concession, condescending as it is, and reductionist as far as our constitutional responsibilities are concerned, is not even in line with the Supreme Court opinion, which states in paragraph 153:

It will be for the political actors to determine what constitutes "a clear majority on a clear question"...

As far as Mr. Chrétien is concerned, there is but one category of actors: those sitting in the House of Commons.

This arrogant, disdainful attitude, which we have seen too often in the past, had an echo here in this house when the Leader of the Government, referring to the Quebecers who voted in the 1980 referendum, used these ill-chosen words:

I am not sure all of them understood the consequences of their vote.

The Leader of the Government is not a Quebecer. He did not have the opportunity of voting in 1980. I would remind him that at that time Quebecers rejected the proposal of the Lévesque government demanding the mandate to negotiate sovereignty-association. Does the Leader of the Government in the Senate believe that Quebecers voted in favour of maintaining the federal link because they did not know what they were doing?

Why then did Mr. Trudeau and the other federalist leaders of the day emphasize — rightfully — the wisdom of the decision made by the people of Quebec? Why did Mr. Trudeau say a few days before the vote that a yes would be interpreted as a vote in favour of change? Does the leader think that Mr. Trudeau did not know what he was doing?

Honourable senators, I voted no in 1980 and 1995. Both times I understood very well the consequences of my vote.



Mr. Chrétien, they say — and this is quite understandable — has apparently begun to think about his political legacy to Canadians. He himself said to party faithful recently that Bill C-20 would be one of his great achievements, the *pièce de résistance*. However, historians will see Bill C-20 in a broader political context than does the Prime Minister. In Canada's recent history, we see that Prime Minister Mulroney managed to twice create a consensus involving the federal government and all the provinces of Canada around the Meech Lake Accord, which was an attempt to rework the unity of Canada's constitutional family.

In the face of this task, I recall that Mr. Mulroney used to like to quote the wise words of Robert Stanfield, who said that nothing was easier in Canada than to unite nine provinces against a tenth, but that it was extremely difficult to unite them all.

Certain senators will say that is old history. I respectfully submit that, had the Meech Lake Accord been passed, there might not be a Bloc Québécois in the Commons. Lucien Bouchard would perhaps not be the Premier of Quebec, and we would not be studying today such a clumsy attempt at defending national unity as Bill C-20, which is applauded in almost all Canadian provinces except Quebec, and not only by the voice of a sovereignist premier.

The leader of the Quebec Liberal Party, Jean Charest, the person who will have to lead the federalist troops in Quebec should there be another referendum in the near future, also opposes Bill C-20. The former leader of the Quebec Liberal Party, Claude Ryan, the person who headed the no forces in 1980, also opposes Bill C-20. We should take their opinion into account too. It is worth just as much certainly as that of the other political actors, who have never lived through a referendum on the independence of their province and will likely never have to.

I am not trying to rewrite history, but I cited the Meech Lake precedent for one very simple reason, and that is to remind honourable senators that impetuous action lacking in inspiration — such as the one by those who scuttled this generous initiative — can have unforeseen consequences that can go on for a long time.

Fortunately Bill C-20 has not had the same impact on the Quebec public as the Meech Lake Accord. This bill is symptomatic of an outdated, narrow and short-term vision of federal-provincial relations, whereas the Meech Lake Accord was first and foremost based on a desire to come together that won over Quebec.

I ask all those who intend to support Bill C-20 to remember how deeply wounded Quebecers were by the failure of the Meech Lake Accord and the harm it did to national unity. Will Bill C-20 help close this wound or is there a chance it might further alienate a number of Quebecers? All the honourable senators, especially those from Quebec, should give this some serious thought.

On motion of Senator Nolin, for Senator Pitfield, debate adjourned.

[English]

## SPECIAL SENATE COMMITTEE ON BILL C-20

MOTION TO APPOINT—POINT OF ORDER—  
DEBATE ADJOURNED TO AWAIT SPEAKER'S RULING

**Hon. Dan Hays (Deputy Leader of the Government),**  
pursuant to notice of May 2, 2000, moved:

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference;

That, notwithstanding Rule 85(1)(b), the committee be comprised of fifteen members, including:

Senator Joan Fraser  
Senator Céline Hervieux-Payette, P.C.  
Senator Colin Kenny  
Senator Marie-P. Poulin (Charette)  
Senator George Furey  
Senator Richard Kroft  
Senator Thelma Chalifoux  
Senator Lorna Milne  
Senator Aurélien Gill;

That four members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee.

POINT OF ORDER

**Hon. John Lynch-Staunton (Leader of the Opposition):**  
Honourable senators, I rise on a point of order. While I have no difficulty in this motion having been made, my point of order concerns the timing of the moving of such a motion. It is my contention that it is premature to move this motion at this time, as it anticipates a decision of this chamber. That is, it anticipates that this chamber will actually give second reading approval to the bill.

• (1610)

Our practice in this chamber, honourable senators, is quite clear when dealing with legislation. We have a motion for second reading of a bill, and when second reading is completed and the second reading motion has been affirmed, then another motion is put forward to send the bill to the appropriate committee. This is in keeping with the seriousness attached to giving a bill second reading. Let me quote from Beauchesne's, 6th edition, page 199, paragraph 659:

The second reading is the most important stage through which the bill is required to pass; for its whole principle is then at issue and is affirmed or denied by a vote of the House.

In Bill C-20, senators will know, because of the extensive debate on this bill so far, there is serious doubt among a great number of senators as to whether this bill should even receive second reading. It has been pointed out that this is no ordinary bill. Senators on both sides of the chamber have even questioned whether there is an appropriate legal foundation upon which this bill can rest. Certainly, many senators are ready to vote against it, when a vote on second reading of Bill C-20 is called, as they are against its very principle. Therefore, I believe it is not in order for us to be discussing a committee to which this bill is to be sent, whether standing or special, prior to it receiving second reading and at a time when we are debating whether we approve of the principle of the bill and whether it should receive second reading.

Furthermore, Beauchesne's, the new *House of Commons Procedure and Practice*, Edition 2000, and Erskine May speak at length of the order of reference to be given on special committees or, in the case of the British house, select committees. Let me quote from Erskine May, page 633, the chapter entitled "Select Committees in the House of Commons," under the heading "Scope of Deliberations or Inquiries, Orders of reference," which states:

When a select committee is appointed to consider or inquire into a matter, the scope of its deliberations or inquiries is defined by the order by which the committee is appointed (termed the order of reference), and the deliberation or inquiries of the committee must be confined within the limits so imposed. But when a bill is committed, or referred, to a select committee, the bill itself is the order of reference, and the inquiries and deliberations of the committee must be confined to the bill and amendments relevant to its subject matter.

Beauchesne's reiterates this in the 6th edition, page 233, paragraph 831(2), which states:

A committee is bound by, and is not at liberty to depart from, the Order of Reference. In the case of a committee upon a bill, the bill committed to it is itself the Order of

Reference to the committee, which may only report it with or without amendment to the House.

Finally, the new procedural text from the House of Commons, entitled *House of Commons Procedure and Practice*, states quite simply, at page 854, that:

When a bill is referred to a committee, the bill itself constitutes the order of reference.

It is quite clear, then, that when a committee considers a bill, whether it is a standing or special committee, the order of reference is the bill and the timing is such that the bill must have received second reading and a motion must have been put forward and been passed and been referred to committee in order for that committee to receive its order of reference, which, in our case, is Bill C-20.

Therefore, honourable senators, I believe it is clearly premature and anticipatory of a decision of the chamber and not in order for us to take up this motion at this time to establish a special committee until such time as a second reading motion has been dealt with, at which time, if the motion carries, then the bill, which becomes the order of reference of the committee, is then and only then ready to be sent to committee. Then and only then, as is our practice on all bills, is it appropriate to decide, after second reading is completed, to which committee it should be sent. If a new committee should be established to receive it, then let us debate that issue at that time, not at a time that prejudices or anticipates a decision of the chamber which may or may not be taken. I quite realize that there are circumstances where bills are sent to committee before second reading, but that is not the route chosen by the government in this case.

Finally, I wish to refer to the rule of anticipation, which is described in some detail in the three procedural texts to which I have already referred. This rule does not appear in either the House of Commons or the Senate rules, but that does not necessarily mean that it cannot be referred to and, perhaps, applied.

As explained at page 476 in the *House of Commons Procedure and Practice*, the rule is dependent upon the principle that forbids the same question from being raised twice in the same session; however, what is important for us here is a discussion in Beauchesne's at paragraph 513(2), where it is stated:

In applying the anticipation rule, preference is given to the discussions which lead to the most effective result, which has established a descending scale of values for discussions, such as bills which have priority over motions, which in turn have priority over amendments.

Later, paragraph 514(2) states:

Debate on a government motion effectively blocks debate on a notice of motion for the consideration of the report of a committee which deals with essentially the same subject.



Erskine May, page 335, states:

A bill or other order of the day is more effective than a motion; a substantive motion more effective than a motion for the adjournment of the House or an amendment, and a motion for the adjournment is more effective than a supplementary question.

All this to say that my contention is that this is a useful rule which should be applied in the case before us. If applied to our situation, a motion for second reading of a government bill would take precedence over a motion to establish a special committee to examine the bill. Therefore, in the words of Beauchesne's, debate on this government motion for second reading of a government bill effectively blocks debate on the motion to establish a special committee because it anticipates a decision of this chamber that may never come.

Honourable senators, for these reasons, I believe it is out of order for us to begin debate on Senator Hays' motion until such time as we have completed the second reading debate on Bill C-20, and the chamber, then having agreed to Bill C-20, can determine whether a special committee or any other committee should receive the bill — but not at this time.

**Hon. Dan Hays (Deputy Leader of the Government):**

Honourable senators, perhaps I should add a few words. I have not had the benefit of an opportunity to review the texts on which we rely. However, I listened as carefully as could I to Senator Lynch-Staunton. His point of order is based on the motion to strike a committee prejudging a more important decision of the Senate, namely, the decision of the Senate as to whether to give second reading to Bill C-20, which is referred to in my motion.

I have only a passing familiarity with the question of anticipation. I think Senator Lynch-Staunton had a motion that stood on the Order Paper and, because it anticipated something that was a condition precedent to the matter with which the motion dealt, it stood and was not appropriate to be debated until the matter which was a condition precedent had been disposed of.

We are, I believe, nearing the end of second reading debate on Bill C-20. This matter might have stood as a motion longer than it did. However, I moved the motion, and I believe it is incumbent upon me to give some reasons for debate on the matter proceeding. I suspect the Speaker *pro tempore* will take this point of order under advisement and that we shall receive a ruling later.

I assume that Senator Lynch-Staunton's objection presupposes that the motion would be passed and would, in some way, affect, fetter or compromise the Senate in its dealing with the second reading decision on Bill C-20.

• (1620)

I think there is a very strong and persuasive argument to be made that that is not the case, and I will make my argument lacking my Beauchesne's and rules and so on, and a way to find

my way through them on short notice. This particular motion, if passed, would not prevent or fetter in any way the Senate from making a decision as to whether Bill C-20 is or is not given second reading. If we defeat Bill C-20 at second reading stage, this motion would become an irrelevant, redundant motion which would have no effect. It would automatically fall off the Order Paper at that point.

My argument is that this is not a situation where the anticipation is of such a nature that it would in any way affect the deliberations of the Senate. If we vote for the creation of the committee and subsequently vote against Bill C-20, it would the bill will not be referable to any committee, never mind a special committee.

Our only purpose in dealing with this matter now is so that we the special committee will be prepared to deal with the matter. This motion is debatable, and the question of creating a special committee is up to the chamber to decide. Assuming that we do deal with this motion — and I think that is the circumstance about which Senator Lynch-Staunton is complaining — that would in no way affect the Senate's ability to debate Bill C-20 at second reading stage.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**

Honourable senators, in speaking to the point of order, the fundamental point that has been addressed so far speaks to the principle of anticipation. We have received some guidance from Senator Lynch-Staunton on that from Beauchesne and some of the other procedural authors. For the benefit of the chair, which will be examining this matter, I would suggest that consideration be given to page 144 of the standing rules of the House of Lords in the United Kingdom.

I would much rather comment on the substance of the motion rather than on the time frame that has been addressed so far. This motion is to appoint a special committee of the Senate to deal with this matter as opposed to a standing committee, as is the normal practice. We need not go to the more removed considerations, namely, the principles in the procedural literature; we can go to our rules.

I wish to draw the attention of honourable senators to our rule 4(3)(e):

"Special Committee" means a select committee, other than a standing committee, appointed to consider certain matters and to report thereon to the Senate;

The next paragraph gives us the definition of "standing committees," such as the Standing Senate Committee on Legal and Constitutional Affairs. A "standing committee," according to our rules, means:

a select committee appointed to consider and to report to the Senate on matters falling within the duties specifically assigned to it by these rules...

That is the important point: as specifically assigned to the standing committee by these rules.



What is specifically assigned to the Standing Senate Committee on Legal and Constitutional Affairs by our rules? Rule 86(1)(k) provides that:

The Senate Committee on Legal and Constitutional Affairs, composed of twelve members, four of whom shall constitute a quorum, to which shall be referred...bills —

Honourable senators, we are dealing with a bill — a bill that relates to constitutional matters. In the text of Bill C-20 there is a provision that at some point in time a constitutional amendment has to be dealt with in the process of its passage. It is clear that this bill, which has in its very text matters dealing with constitutional amendment, falls clearly within the mandate of the Standing Senate Committee on Legal and Constitutional Affairs because of the mandatory nature of that paragraph on page 92 of our rules.

Therefore, honourable senators, on the substance of the matter that is before us, this is quite inappropriate. This is no ordinary matter. This is a bill. It is very specific. Our rules say that specific matters must be referred to standing committees.

Honourable senators, that is the procedural argument. It is clear in our rules, and I think Her Honour need not go beyond that. I would rather not throw aside the veil to debate the motivation as to why this bill would go to a special committee as opposed to the Standing Senate Committee on Legal and Constitutional Affairs.

**Hon. Lowell Murray:** Honourable senators, I think it would be helpful to simply remind colleagues that as recently as Tuesday of this week, the Chair took a very firm position on the proper sequence of events to be followed with regard to legislation and the referral of legislation to committees. Colleagues will recall that Senator Lynch-Staunton, the Leader of the Opposition, had attempted to bring forward a motion to instruct the committee that might eventually be formed on this very bill. Her Honour found the motion out of order in the first place because it was a mandatory rather than a permissive instruction. However, Her Honour also pointed out that Senator Lynch-Staunton's motion was out of order because of its timing. I quote from the ruling to be found at page 1200 of the *Debates of the Senate* where Her Honour stated:

...I think it advisable to note that a motion of instruction cannot properly be taken up for debate prior to the adoption of the second reading motion on the bill to which it relates. Again, all the authorities are clear on this. Beauchesne states, at paragraph 684 on page 204, that:

The time for moving an Instruction is immediately after the committal of the bill, or, subsequently, as an independent motion. The Instruction should not be given while the bill is still in the possession of the House, but rather after it has come into the possession of the committee...

I must say that on the basis of that very firm ruling as to the proper sequence of events that should be followed with regard to legislation and its referral to committees, I cannot for the life of me see how the Chair could find Senator Hays' motion,

anticipating as it does an affirmative decision at second reading of this bill, in order. At a minimum, I think Senator Hays would have to obtain leave to proceed with such a motion prior to second reading of this bill.

• (1630)

**Senator Hays:** Honourable senators, I should like to comment further, now that additional comment has been made.

On this matter of order, I think Senator Kinsella has dealt more with the substance of the motion rather than its orderliness in terms of our rules that provide for the reference of bills to certain standing committees. I think his point is that where we have a standing committee that, pursuant to the rules, has a mandate to deal with a particular piece of legislation, that should end the discussion.

My comment is more on the substance of the motion than on whether it is a matter of order, although it could be construed as a matter of order. Thus, I should not let this opportunity to comment pass.

We have done this before, honourable senators. Of course, precedents are not necessarily correct; however, they establish a way of doing things, if you will, a custom or practice. We have in the past referred bills to special committees. In that regard I mention Bill C-110, which was introduced in the Thirty-fifth Parliament and which dealt with the extension of a constitutional veto to the five regions. That was done at a time when our present rules were in place.

In the 1980s, there are also examples of special committees receiving legislation, although I do not know in which Parliaments. There was Bill C-21 on unemployment insurance and Bill C-22 on drug patents, both of which, under the rules, could have been sent to a particular committee for consideration after second reading but, in fact, were referred to special committees.

Senator Murray raises some interesting points that arise from the ruling of the Speaker *pro tempore* earlier this week, but I do not think they have application here. That ruling dealt with the difference between a permissive and a mandatory instruction to a committee. As I read the ruling, and as I listened to it being read in this chamber, there are certain mandatory instructions that are in order, such as an instruction to split a bill, something with which we have had experience.

**Senator Murray:** The last two paragraphs, senator.

**Senator Hays:** However, permissive instructions, generally, are not in order. Thus, it really comes down to what definition we give to "anticipation." If we deal with something that anticipates a particular decision of the chamber through a vote, then I do not think it is in order, and I would not argue against it. I do not think that a motion to strike a committee to review a bill, if passed, anticipates or precludes the Senate in any way from any of its rights. I draw attention to the wording of the motion, which states "if" the bill is passed "after second reading." If it did not say that, perhaps there would be an argument. However, the motion clearly states that the bill would be referred to a special committee after second reading. If it does not receive second reading, it will not be referred.

**Senator Lynch-Staunton:** It presumes.

**Senator Hays:** I thank Senator Lynch-Staunton for the prompt. I do not think it presumes; I think it simply prepares the way for a bill. Hopefully, it will streamline the management of the business of our chamber, as it does not in any way interfere with the decision that the Senate will take at second reading.

**Senator Kinsella:** Honourable senators, it would be helpful if Senator Hays could advise the house whether, in the case of Bill C-110 and the other cases to which he has referred, the decisions taken at the time by the Senate to refer the measures in question to special committees as opposed to standing committees was done by unanimous consent of the house or by a majority decision.

**Senator Hays:** Given the fractious nature of this place, it is hard to imagine it being done by unanimous consent. The truth is I do not know whether it was done by unanimous consent.

As to orderliness, whether it was done with unanimous consent or not, it was done.

**Senator Murray:** After second reading, surely.

**Senator Hays:** I do not know the answer to Senator Murray's inquiry either. He may be right.

In any event, I am still obliged, and I feel comfortable in arguing my position.

**Senator Murray:** We are glad you are comfortable.

**Senator Hays:** I am glad that the honourable senator is glad that I am glad.

The rules that Senator Lynch-Staunton used as the basis for his question concerning orderliness of this motion relate to matters that are not a problem in this case. As I have explained, the committee has relevance only after second reading; and by creating the committee in anticipation of the possibility of receiving the bill, there is no interference with the rights and privileges of senators or the Senate in dealing with the bill at second reading.

**Hon. Anne C. Cools:** Honourable senators, I have been listening fairly attentively to the discussion. First, I would like to thank Senator Lynch-Staunton for bringing forward his point of order. I am a little surprised because I have an interest in this bill and this special committee. Thus, I have been preparing myself to speak against this motion regarding the special committee, because I belong to that group of people who believes that the Standing Senate Committee on Legal and Constitutional Affairs is perfectly competent to study the bill and that no special committee is required.

In addition, I have a profound interest. I have grown a little weary of the tedium of organizing bills to go around me, something which is burdening me. I will begin to relieve myself of that burden by talking about it. As such, I have been preparing

myself to speak against the motion for a special committee. I have worked for years to become a member of the Standing Senate Committee on Legal and Constitutional Affairs, and I do not like the fact that persons may be attempting to steer a bill around me. We are not on the substance of the motion.

**Senator Murray:** Surely not.

**Senator Cools:** On the business of the point of order, I have a couple of questions. It seems to me that Senator Lynch-Staunton has a point. It also seems to me that if Senator Hays had not moved his motion today, perhaps there would be no problem because the motion as written clearly anticipates and expects an affirmative vote at second reading. I had not noticed that and I thank Senator Lynch-Staunton for bringing it to my attention. Obviously, someone has been a bit tardy in the drawing up of the motion. Perhaps the question may be settled, for example, by Senator Hays withdrawing it and bringing forward a motion that is better drafted. There is another solution, which of course is to vote it down, which I think is unlikely. However, I think it would be poor parliamentary form for the Senate to be voting on poorly drafted motions.

• (1640)

Let us see what is missing in this motion. It states:

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec secession reference;

It does not say "after a vote at second reading stage." It does not say "at the conclusion of the voting at second reading stage," and it does not say "if and when the bill has passed second reading." It very clearly says "after second reading." This statement, as written, clearly anticipates an affirmative vote. It definitely anticipates a conclusion that the Senate has yet to make. Perhaps whoever drafted this motion did not fully anticipate that Senator Hays would be moving it so quickly. Perhaps it was intended to sit on the Order Paper for several days and to be moved at the appropriate time.

There is another flaw in the motion, honourable senators. We must understand that every motion of this chamber becomes an order of this chamber. Any order of this chamber can demand obedience. Therefore, one must be very careful with these motions because a motion poorly drawn like this can become an order to vote a certain way at second reading, which I am sure is not what Senator Hays intended.

The second deficiency in this motion, as I can see, is that it says "Bill C-20" and then continues with the words "to give effect to the requirement for clarity," et cetera. This is very interesting. It does not say that Bill C-20 is "an act to give effect." That is a second flaw in the motion. In actual fact, this motion could be asking the committee to consider giving effect to the requirement for clarity itself. It does not say "an act."



Obviously someone saw it — and I see Mr. O'Brien smiling — but the document that I am reading from is *Debates of the Senate* of May 2, 2000, and I am absolutely certain. Honourable senators can check my reference, page 1175, under Routine Proceedings, Special Senate Committee on Bill C-20, Notice of Motion to Appoint. The Honourable Dan Hays states:

Honourable senators, I give notice that, on Tuesday next, I will move:

The text of the motion is written out exactly as it is read, and to be quite sure that I am not mistaken, it reads:

That a special committee of the Senate be appointed to consider, after second reading, Bill C-20, to give effect to...

The words "an act" are not in this particular document. Senator Hays may want to look at that later on.

I am reading from *Debates of the Senate*, which are carved in stone. What I am reading from is absolutely accurate. Senator Hays will need to rise on the floor of the chamber and get a correction at some point in time, but this is carved in stone for the time being.

Honourable senators, I should like to move on. As I said before, I had not looked at this matter that carefully because my attention was drawn to the fact that I would be opposing that motion because I am getting tired of being overlooked. However, that is a different point.

We must be very sensitive, in a way, because the situation seems to be very peculiar. If we are not careful, we will go from bad to worse. First, the court told us there was no law on secession. Therefore, we are told that Bill C-20 has come. Next we are told there is no committee, so we need a special committee. A motion for a special committee has been brought. Now we are told there is no motion for a special committee. It seems to me that at some point in time we must deal with the fact that we are involved in a set of tortuous contortions, and at some point the government will need to look at this with some seriousness and find out why we seem to be going from mishap to misadventure.

Honourable senators, I should like to raise a couple of issues. This chamber had no knowledge of such a committee or such a motion until last Tuesday. Last Tuesday, Senator Hays rose and gave notice. In point of fact, the honourable senator has not had the opportunity to speak to his motion. Yet, I observe that there are newspaper reports about the committee and the chairman of the committee as though the committee has met and as though the committee has a chairman.

Honourable senators, this chamber has no knowledge of a committee. No committee has been constituted, yet the newspapers tell us that the committee has a chair.

I should like to share with honourable senators two newspaper reports, one being from the *Montreal Gazette* of Wednesday, April 19, which is two weeks, at least, before Senator Hays rose

in this chamber to give notice that he was planning to move a motion. The article is headed "Liberal Senator Fraser to head clarity bill review." It is an article by David Gamble, and it states:

Ottawa — Liberal Senator Joan Fraser will be appointed chairman of the special Senate committee to review the federal referendum clarity bill next month, government sources say.

This chamber has no knowledge of this matter.

Then today, May 4, 2000, in *Le Devoir*, there is a Canadian Press article by Huguette Young, with Senator Joan Fraser's name appearing in the headline of the article, entitled "Joan Fraser ne voit pas de rôle à jouer pour les sénateurs." The translation is: "Joan Fraser sees no role for senators."

Again, no committee chairman has been selected by the committee and no committee has been constituted, but we have commentary from a chairman. I have been a senator for many years, and I have never seen or heard of such a thing. I should expect, therefore, that this kind of anticipatory commentary could be dealt with because there is no committee, there are no committee members, there is no committee chairman, and due process really should be followed.

**Senator Kinsella:** Does *The Gazette* have a copy of the committee report?

**Senator Cools:** I do not know, but the translation of the *Le Devoir* Canadian Press article reads:

Ottawa — Senator Joan Fraser, Chair of the new Senate Special Committee on Bill C-20, considers it entirely legitimate that only the House of Commons be called upon to express an opinion on the clarity of a referendum question on secession by a province.

Then the article goes on at some length with a few quotations.

I repeat, this Senate chamber has no knowledge yet of a committee, no committee has been constituted, and no Chair exists. That is more than a motion, a result. A committee vote and committee considerations have been anticipated.

I had really paid no attention, as I said, to the scripting of the motion itself because my mind was preoccupied with the substance of the motion. I should like to support Senator Hays in some comments of his a few moments ago, when he was referring to the Constitution of other special committees in this Senate chamber over the past many years. I had some pretty strong roles in one of those committees, being the committee that studied Bill C-21 in 1989. I do not think that we tell any tales out of school because it is a record under the leadership of former senator MacEachen of which I am very proud and feel very privileged to have served. We, the Liberals, were the majority in opposition and there were special committees, quite frankly, because Liberals said there ought to be. I should like to say to the opposition across the way that we did some very good work.



• (1650)

Some of you will remember the UI battle. Senator Murray will remember that Senator MacEachen sent that committee down to his neck of the woods. We went to Canso, and we won the political battle that day, though perhaps not the legal battle.

That is a part of the Liberal track record of which we should be very proud. I know I am very proud to have been associated with it.

Finally, Senator Murray raised the Speaker's Ruling of some days ago. Her Honour ruled on the motion by Senator John Lynch-Staunton to instruct the committee to amend Bill C-20 to rank the Senate equally with the House of Commons, or something to that effect.

In terms of the jurisprudence being built up in this chamber and by her ruling of some days ago, I should not say that Her Honour has bound herself, but she has certainly committed herself to the line of thinking that this particular motion is anticipating a result and a conclusion.

I leave it in Her Honour's hands. Based on the precedent set in her ruling, it would appear that Senator Lynch-Staunton's point of order is very much in order. His arguments should prevail if one follows the line of reasoning of Her Honour's ruling.

Having said that, honourable senators, it would be my intention to return to the subject matter of the appointment of a special committee.

**Hon. Joan Fraser:** Honourable senators, I will try not to be long, but some of Senator Cools' remarks may have indicated to honourable senators that I have said or done something that would cast in doubt my respect for this chamber. I do not believe I have done any such thing.

In regard to the first article to which Senator Cools referred from the *Montreal Gazette*, written some time ago by David Gamble, I should point out that I did not speak to Mr. Gamble. He did try reach me, as a professional reporter should do, but I was at pains not to speak to him, even to say that I had no comment. I just did not talk to him. I do not know his sources for that article.

The second article was written by Huguette Young of *la Presse canadienne*, and appeared in this morning's copy of *Le Devoir*. I was at pains in my discussion with Ms Young to be clear that the committee had not yet been created and to be clear that it is the task of the committee to choose its chair. I said that, if the committee were created, I would be a candidate for that position. I did not assume that I would, in fact, be named to that position by the committee.

I also was at some pains to repeatedly stress that Senate committees take their work very seriously; that they do thorough reviews of legislation; and that I would not wish to pre-judge in

any way the work of that committee. When she asked me about my personal opinions, which were on record because they were uttered in this chamber, I attempted to give her a faithful rendition of what I had said in this chamber, but I was at pains to say that, in that case, I had been speaking as an individual senator, not as a member and certainly not as a chair of a committee.

**Senator Cools:** Honourable senators, I appreciate Senator Fraser's comments. I have no problem with them whatsoever, but we were speaking to two different points. She was speaking to the point of clarifying her own position, which is fitting and just. Perhaps she should write some letters to clarify that.

I, however, was speaking to the very important and narrow point that this chamber has not yet constituted a committee; that no committee has met; that no members have been appointed to a committee; and no chairman has been elected by a committee. That is a very important matter to many of us.

As I said before, I have never seen this before. I have great respect for Senator Fraser, and this is not a personal matter, but this is the first time that I have ever seen such a situation where there is an element of anticipation. It seems to me appropriate to let the process take its proper time and to let it happen.

**Senator Hays:** Honourable senators, I do not intend to repeat anything other than to say that we seem to be discussing, in some sense, the substance of the motion which would be more properly addressed when we are dealing with the motion. We will get to that motion if and when we give second reading to Bill C-20. If we do not, the motion will be irrelevant. That is why the motion does not anticipate anything that the Senate has the right to determine.

I now have an answer to the question asked by Senator Kinsella. I know that Her Honour will check this, but when Bill C-110 was referred to a special committee of the Senate, the motion to create that special committee was put to the house and adopted, on division. It was not done by unanimous agreement. As I recall, Senator Kinsella chaired that committee.

**Senator Murray:** Was it after second reading?

**Senator Hays:** I do not know the answer to that question. I suspect, since it is not in my notes, that that could well be the case.

I draw attention, as well, to our rule 93:

The Senate may appoint such special committees as it deems advisable and may set the terms of reference and indicate the powers to be exercised and the duties to be undertaken by any such committee.

That rule does not have a condition precedent as to when it can be used. Those are my concluding comments, although, perhaps, I may be given the right to comment further at a later stage.

**Senator Cools:** Honourable senators, the motion seems to be missing one or two words.

This situation is remarkably straightforward. I do not believe Senator Hays intended any disorderliness. Two or three words could be scripted into the motion. The most sensible solution is for Senator Hays to withdraw this motion and bring forward a new motion. That can be done quite easily.

**Senator Lynch-Staunton:** At the right time.

**Senator Cools:** No, he can bring forward a new motion immediately, a motion which is not missing the few critical words.

**Senator Hays:** Honourable senators, in terms of the suggestion that I should withdraw the motion, I doubt very much that I would receive consent to do so.

**Senator Kinsella:** From what side?

**Senator Hays:** That is a good point. As time goes on, I shall have the opportunity to make further contributions to the debate based on the rules. Unfortunately, not knowing the point of order would be raised, I did not do that before today's sitting.

About the rule of anticipation, Beauchesne's says that the moving of a motion was formerly subject to the ancient rule of anticipation which is no longer strictly observed. While the rule of anticipation is part of the Standing Orders of the British House of Commons, it has never been so in the Canadian House of Commons. Furthermore, references to attempts made to apply this British rule to Canadian practice are not very conclusive.

**Senator Kinsella:** From what edition is the honourable senator reading?

**Senator Hays:** I am not reading directly from Beauchesne but from a footnote which references Beauchesne. Let me accept personal responsibility for that.

• (1700)

The other point that I would make is that I believe texts provide that the rule of anticipation becomes operative only when one of two similar motions on the same Order Paper is proceeded with. From the comments I made earlier, that is obviously not the case here.

No, I do not intend to withdraw the motion.

**The Hon. the Speaker pro tempore:** Do any other senators wish to speak?

[Translation]

Honourable senators, I thank you for your comments, which will certainly give me some food for thought.

[English]

At this time, I will reserve my decision, take advice, and discuss the matter with His Honour upon his return next week.

## CRIMINAL CODE

### BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Milne, for the second reading of Bill S-9, to amend the Criminal Code (abuse of process).—(*Honourable Senator Cools*).

**Hon. Anne C. Cools:** Honourable senators —

**The Hon. the Speaker pro tempore:** I would inform the Honourable Senator Cools that if she speaks now, her speech will have the effect of closing the debate on the motion for second reading of Bill S-9.

**Senator Cools:** Honourable senators, this matter has been thoroughly canvassed in this chamber on several occasions. I thank Senator Kinsella for speaking to it several days ago. It is my intention to allow the question to be put so that the bill can be referred to committee.

This is an important and pressing social policy question which is the abuse of process within child custody and access disputes where one parent, usually the mother, falsely accuses the other parent, usually the father, of sexually abusing their own children.

I have done much work in this regard. In my last speech some months ago when I opened the second reading debate, and I believe that was Thursday, February 17 of this year, I placed on the record 49 adjudicated cases of decisions where judges had made findings that such accusations were false. I view this issue as a national crisis of epic proportions.

I do not know how many of you have taken the time to read some of these judgments, but sifting through them is a painstaking, tedious process. I have been collecting these cases for many years, and I know there are many more cases to collect.

I should like to now place three more adjudicated cases on the record so that, before the bill is referred to committee there will be 52 adjudicated cases available. These are cases where judges have reviewed the evidence and rendered judgments.

Often when case names comprise initials, it is a sign that minors are involved. When one reads these cases it may sound as though one is reading Greek or some other foreign language.

The first case is by Judge Fisher, 1995, *A.L.J.R. v. H.C.G.R.* The second case is by Justice Macleod, 1993, *Jeanson v. Gonzalez*. The third case is a decision by Mr. Justice Flurry, 1996, *S.W.C. v. T.L.C.*



I would like to put a few quotations on the record. In the case of *A.L.J.R. v. H.C.G.R.*, a case in the Ontario Court of Justice, Provincial Division, in Milton, Ontario, with Provincial Judge Fisher, the judge wrote at paragraph 17, Quicklaw:

From the evidence that I have read, however, I believe Dr. Hurst's report. I find that the father committed no physical or sexual abuse and that the mother programmed her child to give fictitious complaints.

At paragraphs 19 and 20, he continues:

She is not now a candidate for parenting because of the emotional abuse that she has inflicted, not only on her child but herself.

I hope that those interested in this matter have had the opportunity of reading Dr. Hurst's monitoring of a visit between the father and D.R. It is touching. An expert is telling us that there is a close, loving relationship between the father and his daughter.

At paragraph 23 the judge continues:

When, in the past, I have read evidence of alleged abuse, I have decided to err on the side of caution and order supervised access. Judges often do this. I confess to have been taken in by the mother's evidence. However, it appears in making such an order that I simply erred. It is to be hoped that this order corrects that error.

Honourable senators, I put that particular citation by that judge on the record because I thought that was a real mark of character for the judge to admit that he had made such a mistake, and that he was hoping that his correction of the order would correct the error that he had made. That was an extremely fine statement to make.

The next case that I would like to place on the record was also heard in the Ontario Court of Justice, General Division, in Welland, Ontario, by Mr. Justice Fleury, *S.W.C. v. T.L.C.* In this case, again, at paragraphs 9 and 10, the judge says the following:

There is no doubt that whenever allegations are made regarding sexual abuse of very young children by one of the parents, this throws a major wrinkle in the custody determination process. It is very hard for any judge to ignore such allegations. This kind of abuse has a potential for such long-term trauma that one must take all necessary steps to ensure that a child is not exposed to an individual who would be disposed to engage in such conduct. I am satisfied in this case that these allegations are completely without foundation.

...Why were such groundless accusations made? Although it is difficult to understand how an individual as intelligent and as educated as the wife is, could have prompted her daughter to say such things, I have come to the collusion on

a balance of probabilities that she in fact did this. She was so concerned about her husband's claim for custody that she decided to resort to this kind of malicious and devious way of improving her chances of success.

The third and final case — and these again are adjudicated cases with legal findings — is the case of *Jeanson v. Gonzalez*, Ontario Court of Justice, General Division, Kingston, Ontario, Mr. Justice MacLeod, at paragraph 22, writes:

Her affidavits were absolutely scandalous and outrageous in light of their content. She misrepresented the facts of this case to the Children's Aid Society, to the medical profession, and to her own psychiatrist, if any of their reports are a summary of what she told them. She has caused both Mr. Gonzalez and Mr. Jeanson to have extensive legal costs in this matter.

Honourable senators, I forgot to say that this was a case of two relationships and two sets of accusations.

She has caused both Mr. Gonzalez and Mr. Jeanson to have extensive legal costs in this matter. Mrs. Watts has been found previously in contempt of court and it should be noted that during the middle of my delivery of these Reasons she walked out of the court-room without hearing them to their conclusion.

While Mrs. Watts is now seeing a psychiatrist, to help her deal with her personal problems and to come to terms with her present circumstances, I do not see any evidence that she has dealt with her circumstances to any sufficient degree and in fact, as I have said repeatedly, her agenda remains the same, to frustrate and obstruct the access by further court applications, each and every time that she can, by both Mr. Gonzalez and Mr. Jeansen in hopes that the two fathers will literally give up and return custody of the two children to her.

• (1710)

Honourable senators, in conclusion, I should like to say that this entire area is such a heart of darkness and is really needing some light to be shed on it and some very dutiful study and consideration.

I have spoken to hundreds of people who have been so falsely accused. These are not a list of the accusations that I present here; these are the cases where findings have been made. Thus, I submit to honourable senators that on any kind of ratio that one would want to evolve for basic written arithmetic, these actual findings would be a very small percentage of accusations that have been made.

I thank honourable senators on both sides of the chamber who have been supportive of this particular issue and senators in the past who are no longer here, such as Senator Wood, Senator Phillips and others.

Motion agreed to and bill read second time.



## REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Cools, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**STATISTICS ACT  
NATIONAL ARCHIVES OF CANADA ACT**

**BILL TO AMEND—SECOND READING—DEBATE CONTINUED**

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-15, to amend the Statistics Act and the National Archives of Canada Act (census records).—(*Honourable Senator LeBreton*).

**Hon. Joan Fraser:** Honourable senators, I should like to say a few words about Bill S-15, if you will bear with me. I shall bear in mind that the hour is late.

I should like first to congratulate Senator Milne for her indefatigable work in this valuable cause. When she began with an inquiry in the last session of Parliament, I think some of us thought that she was talking about something fairly obscure, something that was of interest to a few Canadians, but not really of general importance. Now we know better.

This bill addresses what threatens to create a serious gap in Canada's historical record — the policy of Statistics Canada that individual census records from all censuses from 1911 on must remain secret in perpetuity. Statistics Canada believes that this policy is grounded in law and in a promise made by Sir Wilfrid Laurier in 1906. Given that belief, Statistics Canada is correct in refusing to make the individual census returns available to researchers, unless instructed to do otherwise by Parliament.

There is room for some argument about whether Statistics Canada's belief is correct. I was particularly interested to read a brief by Gordon A. Watts, of Port Coquitlam, B.C., that was submitted to the Minister of Industry's expert panel on the release of historic census records. Mr. Watts has done a careful search of all the parliamentary debates in 1905 and 1906 relating to statistics and the census. He has been unable to discover any place where Sir Wilfrid in fact made this famous promise to Canadians. Indeed, Mr. Watts says there was no debate at all about privacy, confidentiality or secrecy relating to information regarding identifiable individuals — no debate at all. There was a major debate in 1905 about the new act respecting the census and statistics, but it did not, he says, touch upon secrecy.

What actually happened, apparently, was that secrecy was imposed at that time not by legislation or by a prime ministerial commitment to Parliament but by regulation. The regulations were drawn up by the then minister of agriculture, Sydney Fisher and, under the terms of the act, acquired the force of law. As is so

often the case now, as then, there was no debate in Parliament about these regulations.

In a later revision of the actual legislation in 1918, they were incorporated into the law itself, presumably because by that time they had become accustomed to practice. Indeed, in practice, the Dominion census had been providing confidentiality for individual returns ever since Confederation, which in 1905 was still fairly recent history, well within the lifetime of most parliamentarians. However, the question of perpetuity does not seem to have been addressed, and that is what concerns us today.

[*Translation*]

In fact, Mr. Watts suggests that the famous secrecy surrounding individual records may have been imposed almost by accident or, in any case, as a simple corollary to the rule that corporate records had to be protected, because companies obviously did not want their competitors to have access to details about their operations. I cannot say what Minister Fisher had in mind when these regulations were adopted. However, we can easily conclude, upon reading the instructions given to the employees of what was to become Statistics Canada, that the fundamental point was to reassure Canadians that their records could not be used by other government departments. We could not then and we cannot now use these records for income tax purposes, military service, immigration and so on. This is of course essential for any census in a free and democratic society.

However, to say that we can never use these records, even generations later, for legitimate research purposes, seems to me to be going rather far, too far.

[*English*]

Even if it is true that Parliament originally intended the records to remain secret forever, it is the job of each succeeding Parliament to reassess past policies in light of present needs. Parliament today has the right to change a decision made by Parliament in the past, even a decision made after lengthy and full debate. When the original decision in question was made by simple regulation, not debated at the time, there is even more reason to revisit it now, nearly a century later.

Senator Milne's bill offers a neat solution by having Statistics Canada transfer the individual returns to the national archives, which would, 92 years after each census, then make them available for research in proper archival terms. Ninety-two years is the period that was applied for the release of individual returns in all censuses before 1911, so it has the virtue of consistency. As I suggested here last year, however, I think we should perhaps consider lengthening that term slightly, now that so many people are living well into their nineties. I think it would be appropriate to have a 100-year term or perhaps even a little more. Clearly, we do not wish to invade the privacy of persons who are still alive.

The basic principle that these records should become available at some point is, in my view, indisputable. They are simply too important as historical records. They are useful for genealogists like Senator Milne, but also for historians, social scientists and even for some physical scientists such as biologists.

• (1720)

The information they provide is literally irreplaceable, not available from other sources, or not available in this detailed, comprehensive form.

Other major countries have considered this dilemma, this need to reconcile the need for privacy with the need for good historical records, and they have concluded that, after a suitable period of secrecy, the individual returns should be made available. Australia and the United States, for example, have both reached that conclusion. I believe that Canada should do likewise.

The expert panel is expected to report by the end of this month. I hope it will make appropriate recommendations to end this policy of perpetual secrecy, and if it does make those recommendations, perhaps the government will act accordingly and rapidly. If not, however, Senator Milne's bill is here to ensure that the right thing will in fact be done, and I am more than pleased to support it.

On motion of Senator Kinsella, for Senator Johnson, debate adjourned.

### QUESTION OF PRIVILEGE

**The Hon. the Speaker *pro tempore*:** Honourable senators, we will now proceed to the question of privilege raised by Senator Tkachuk on May 3, 2000.

**Hon. David Tkachuk:** Honourable senators, I made my arguments yesterday on the question of privilege. I would, however, add a few remarks. I should especially like to quote Senator Andreychuk, who raised an issue much like this with respect to the leaked report of the Aboriginal Committee. She said:

Honourable senators, this leak is also a breach of privilege for all members of the Senate. To read recommendations in the newspaper is certainly not how we want to receive reports of the Senate. It is time that we did something about this state of affairs.

In the case of the report of the Standing Senate Committee on Banking, Trade and Commerce with respect to taxation of capital gains, the final report was the one that was quoted in the *Financial Post*. It was not, as in some other cases, a draft copy where there are many made and distributed, but the final report, which had a limited distribution. We are unable to tell the Senate exactly what that distribution was at this time because it was brought to our attention, of course, on Wednesday morning when the article appeared in the paper and Senator Kolber was preparing to present this report on Tuesday next.

With the permission of the Senate, I should like to table a copy of the *Financial Post* business section where it was reported. It is dated Wednesday, May 2, 2000. The headline is, "Senate report urges capital gains tax cut," which I believe will give the evidence needed to prove that this report was leaked and was

given out by someone to people other than the members of this chamber.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is permission granted to table the report?

**Hon. Senators:** Agreed.

**Senator Tkachuk:** Honourable senators, if Her Honour finds that a *prima facie* case has been made, I will then move a motion referring the matter to the Standing Committee on Privileges, Standing Rules and Orders.

### SPEAKER'S RULING

**The Hon. the Speaker *pro tempore*:** Honourable senators, on the question of privilege, I thank Senator Tkachuk. Yesterday, when we reached the Orders of the Day, Senator Tkachuk obtained leave to raise a question of privilege under rule 43, even though he had not met the requirements of providing written notice to the clerk within the prescribed time prior to the Senate sitting.

Senator Tkachuk's question of privilege concerned the publication of information based on the fifth report of the Standing Senate Committee on Banking, Trade and Commerce. This information appeared in a newspaper yesterday, before the report was tabled in the Senate. In fact, according to the honourable senator, the committee decided to rush the tabling of the report as a consequence of the newspaper story.

Senator Austin then made some comments about the case. He noted that the journalist himself acknowledged that the report had not yet been submitted to the Senate. Citing paragraph 877(1) of Beauchesne's 6th edition, the senator expressed the belief that the circumstances of the case clearly demonstrate that there is a *prima facie* breach of privilege.

Shortly thereafter, discussion on this matter was halted when Senator Lynch-Staunton correctly pointed out that any review of the *prima facie* merits of the case should be postponed until after the Orders of the Day had been disposed of.

[Translation]

Today, additional arguments have been made. I want to thank all honourable senators who participated in the discussion. I have reflected on the recent rulings of the Speaker and the views expressed yesterday and today by Senator Tkachuk. I am prepared to make my ruling.

My obligation as the Speaker *pro tempore* is to consider only whether the evidence presented suggests that a breach of privilege is involved. My role is limited to determining whether there appears to be a *prima facie* case. It is not for me to decide whether there has in fact been a breach of the Senate's privileges. If, however, I do determine that there is a *prima facie* case, then the Senate must resolve how it will dispose of the matter. If the Senate also agrees that the issue might constitute a question of privilege, a motion is usually adopted to refer the matter to the Committee on Privileges, Standing Rules and Orders.



[English]

Based on several recent precedents, including the decision by the Speaker on October 13, 1999, and the case Senator Tkachuk mentioned dealing with the premature disclosure of a draft report of the Aboriginal Peoples Committee, and on the incontrovertible evidence provided by the journalist who wrote yesterday's newspaper story, I rule that a *prime facie* case of a question of privilege has been made. The matter should be put before the Senate for its determination.

Therefore, Senator Tkachuk may now proceed with his motion.

REFERRED TO THE STANDING COMMITTEE ON PRIVILEGES,  
STANDING RULES AND ORDERS

**Hon. David Tkachuk:** Honourable senators, I move:

That the question of privilege concerning the unauthorized release of the fifth report of the Standing Senate Committee on Banking, Trade and Commerce be referred to the Standing Committee on Privileges, Standing Rules and Orders.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

• (1730)

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Isobel Finnerty,** for Senator Spivak, pursuant to notice of May 3, 2000, moved:

That the Standing Senate Committee on Energy, the Environment, and Natural Resources have power to sit at

5:00 p.m. on Tuesday, May 9, 2000, for the purpose of hearing witnesses on its special study, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Explain, please.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, perhaps Senator Finnerty could tell us why it is necessary, in the opinion of the committee, to sit when the Senate is sitting.

**Senator Finnerty:** Honourable senators, we had invited some witnesses to appear before the committee, but we have not been able to reach them. This will be a one-time only request. We will not be asking for permission to sit again when the Senate is sitting. However, we had these witnesses wait last week for an hour and one-half when the Senate was sitting, which was very unfortunate.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

## ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until Tuesday, May 9, 2000, at 2 p.m.

Motion agreed to.

The Senate adjourned until Tuesday, May 9, 2000, at 2 p.m.

**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 36th Parliament)**  
**Thursday, May 4, 2000**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	0	99/12/16		
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02	00/04/04	Transport and Communications					
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21	00/04/04	Foreign Affairs	00/05/04	0			
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21	00/04/06	Banking, Trade and Commerce					

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29	00/03/28	Legal and Constitutional Affairs	00/04/13	0			
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99



C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	99/12/06	99/12/09	00/04/13	5/00
			Subject matter 99/11/24			
		99/12/06	Social Affairs, Science and Technology	2		
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/30	4	99/12/08	00/03/30
			Legal and Constitutional Affairs			
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	0	00/04/13	00/04/13
			Aboriginal Peoples			
C-10	An Act to amend the Municipal Grants Act	00/03/28	00/04/10	0		
			National Finance			
C-13	An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts	00/03/30	00/04/04	0	00/04/10	00/04/13
			Social Affairs, Science and Technology			6/00
C-20	An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference	00/03/21				
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	—	99/12/16	99/12/16
						36/99
C-23	An Act to modernize the Statutes of Canada in relation to benefits and obligations	00/04/12				
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23	00/03/28	—	00/03/29	00/03/30
						3/00
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23	00/03/28	—	00/03/29	00/03/30
						4/00

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0	00/03/21	00/03/30	2/00
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							
C-473	An Act to change the names of certain electoral districts	00/04/10							

## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					

S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02			
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology	
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs	
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders	
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02			
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03	00/05/04	Legal and Constitutional Affairs	
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.)  (Dropped from Order Paper pursuant to Rule 27(3) 00/02/08) (Restored to Order Paper 00/02/23)	99/11/04			
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18			
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance	
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16			
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimard)	00/02/22			
S-20	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	00/04/05			
S-21	An Act to protect heritage lighthouses (Sen. Forrestall)	00/04/12			



## PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	—	—	—	99/12/08	00/03/30	

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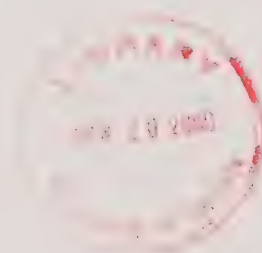
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OFFICIAL REPORT  
(HANSARD)

Tuesday, May 9, 2000

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



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## THE SENATE

Tuesday, May 9, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### WORLD WAR II

##### FIFTY-FIFTH ANNIVERSARY OF VE DAY

**Hon. William M. Kelly:** Honourable senators, it gives me great pleasure to rise this afternoon to mark the fifty-fifth anniversary of the end of the war in Europe.

On May 8, 1945, the Second World War ended for Canada with the unconditional surrender by Germany in Europe. After six long winters filled with despair, Canadians across the country rejoiced in the end of this stage of the war. Men and women poured into the streets as victory parades were celebrated along every main street in Canada. Church bells could be heard for miles as celebratory bonfires were lit and children shouted with joy. At the same time, there was an indescribable heartbreak felt by many young widows, parents and siblings as their thoughts turned to their loved ones who had paid the ultimate sacrifice for our freedom.

This year, over 4,000 Canadian veterans commemorate the fifty-fifth anniversary of VE Day by returning to Holland, a place that holds a special meaning for them. For the veterans, it is a home and a country where the atrocities of the past as well as fallen family and friends are remembered.

The Dutch have not forgotten the valiant battle that these servicemen fought against a monstrous enemy. In the Netherlands yesterday, over 150,000 people lined the streets, applauding continuously, to express their love and gratitude to the Canadian soldiers who liberated them from the shackles of war.

The emotional welcome that the soldiers received in Holland would reaffirm our commitment as Canadians to never regret what was won and what was lost, all to defend the right to be free.

Honourable senators, today we must thank each and every soldier for providing Canadians with the freedom that we currently enjoy. I believe it is only fitting that we honour the sacrifices of the past by ensuring that this history never repeats itself.

### NATIONAL PALLIATIVE CARE WEEK

**Hon. Sharon Carstairs:** Honourable senators, I am pleased to inform my colleagues as well as all Canadians that beginning yesterday and continuing until May 14 is National Palliative Care Week.

Palliative care is aimed at relieving suffering and improving the quality of life for persons who are living with or dying from advanced illness. This type of care includes the person and his or her family in planning treatment and care so that they can make choices based on knowledge and understanding.

Palliative care offers social, economic and spiritual support to the person as well as their family by members of a diverse team, which includes physician, nurse, social worker, home care planner, volunteer and other therapists.

The Canadian Palliative Care Association is a national association that provides leadership in hospice palliative care in Canada through collaboration and representation, development of national standards of practice, support in research, advocacy for improved policy, and research allocation and support for caregivers. They also work to increase awareness, knowledge and skills related to palliative care of the public, health providers and volunteers.

• (1410)

Honourable senators, please join me in commending the dedicated professionals, caregivers and volunteers who provide palliative care, and to the Canadian Palliative Care Association and its affiliates, which are working to ensure the comfort and dignity of the dying.

### THE LATE JUSTICE RONALD NEWTON PUGSLEY, Q.C.

#### TRIBUTE

**Hon. Donald H. Oliver:** Honourable senators, Canada has lost a brilliant lawyer, a remarkable judge and an outstanding Canadian. Mr. Justice Ronald N. Pugsley died suddenly over the weekend at his home in Halifax. As part of his legacy, he leaves behind a rich and rewarding legal career as one of Canada's best-known trial lawyers and as a judge of the Nova Scotia Court of Appeal.

Mr. Justice Pugsley was born in Toronto, the only son of Thompson and Mabel Pugsley. He attended Upper Canada College and later received arts, commerce and law degrees from Dalhousie University in Halifax. He was an exceptional student.



Justice Pugsley's legal career began in 1957, when he practised at Stewart, MacKeen and Covert — later Stewart, McKelvey, Stirling and Scales — where he later became a senior partner. In 1973, he was appointed Queen's Counsel.

As a trial lawyer, Justice Pugsley was involved in some of Nova Scotia's most renowned legal cases, including the Donald Marshall Jr. inquiry. He was also a past-president of the Nova Scotia Barristers Society and a fellow of the American College of Trial Lawyers. He was also a past-president of the Dalhousie Law School Alumni Association. Justice Pugsley co-founded the law school's civil trial practice program, where he was an instructor for many years.

Honourable senators, I had the honour to assist Mr. Justice Pugsley with several trials. He was a brilliant trial lawyer, whose preparation for court was complete and thorough to the smallest detail. His genius, and the area which set him apart from most trial lawyers, was in his cross-examinations. They were works of art. Justice Pugsley mastered the art of painlessly eliciting information from witnesses that often marked the turning point of a trial. There were many instances when both the opposing lawyer and witnesses did not realize the devastating impact of that evidence until it was too late. He was an inspiration and he will be missed.

Mr. Justice Pugsley's greatness did not go to his head, for he was always courteous, kind and polite to all he met. He was appointed to the Nova Scotia Court of Appeal in 1993.

Honourable senators, Justice Ronald N. Pugsley will be missed. I offer my condolences and deep sympathies to his wife, Joan, sons Michael and Alex, and daughters Alison, Meredith and Amy.

## NATIONAL DEFENCE

### AIRWORTHINESS OF SEA KING HELICOPTERS—LOG OF PILOT

**Hon. J. Michael Forrestall:** Honourable senators, the radio message "Pan, Pan, Pan" from an aircraft signals that there is an airborne problem. While it may not be life-threatening at that stage, the problem could very well deteriorate into an emergency. The Pan signal alerts those on the ground to be prepared to react to a possible emergency, and it clears all unnecessary chatter from the pertinent radio circuits.

Honourable senators, not all problems may warrant a Pan, but if a situation gets worse, to the point that emergency action must be taken, then the "mayday, mayday, mayday" message is broadcast. The mayday message is often the last heard from such an aircraft.

Concern was expressed recently by a young Sea King aviator who tried to put quibbling over the semantics of "safe" and "unsafe" into perspective. This aviator has been flying Sea Kings for five years now, and his log book reveals that in that time he has flown approximately 860 hours and has been in 24 Pan situations. By his calculations, that is one for every 36 hours of flying time, or at an average mission length of three hours, he

was in a Pan situation about one out of every 12 flights. That does not mean he was trouble-free in all the other 11 flights, just that any problems encountered did not warrant a Pan.

Not all Pan situations are caused by aircraft problems. For example, one could encounter unusual icing conditions or be in a low fuel state, but I am told that in the order of 90 per cent of pans in the Sea King are aircraft caused. In training our crews, instructors always relate a potential Sea King in-flight problem and emergency to the not-unusual operational situation of being 100 miles from your ship in the North Atlantic at night and in bad weather.

The same young aviator is convinced the crews are trained adequately to handle these problems, and he still believes the Sea King is "safe." However, what he and other Sea King aviators do not like to hear is someone who does not understand the situation quoting some authority that the helicopter is "not unsafe," by so doing implying that everything is fine and therefore the underlying safety issues associated with this old, tired and not reliable aircraft can be ignored.

## CONSERVATION OF FRESH WATER

**Hon. Lorna Milne:** Honourable senators, the most precious commodity in the world is not gold, nor diamonds, nor oil. It is water — fresh, clean, potable water. This fact is being daily hammered home by reports of dead livestock in Mongolia, India and Pakistan, by drought in the American Midwest, but mainly by the pitiful pictures of the wasted limbs, the gaunt faces and the lacklustre eyes of dying children in Ethiopia.

Almost 70 per cent of the world's surface is covered by water, but all but 2.5 per cent of that is salt water. Most of the world's small amount of fresh water is locked up in the polar ice caps or on mountaintops. Much of the rest comes to earth in seasonal monsoon rains or flows into the oceans from the world's largest rivers. This leaves most living organisms competing for the remainder — the "accessible runoff." However, we humans, only one species of the 7 million that share this globe, already use at least 54 per cent of that accessible water. Add in the fact that humanity is projected to increase by 45 per cent over the next 30 years. Add in also the fact that almost all the world's arable land is already being intensively farmed. There is no more farming land and there is no more water. Both are finite, and already people are dying of starvation. The tragedy looming ahead becomes almost unimaginable.

Honourable senators, here in Canada, we are blessed with the world's largest supply of fresh water. In Ontario alone, there are over 3,000 freshwater lakes. We have 2,600 kilometres of shoreline along the Great Lakes — the longest freshwater border in the world, yet even here we are in trouble. The water table in southern Ontario is the lowest it has ever been. The water level of the Great Lakes range from half a metre to a full metre below normal. Harbours are drying up and dredging is being done right now to keep the international shipping lines open, as well as emergency dredging for some of the marinas. In addition, we have one of the lowest snowfall levels in history this past winter. There is no relief in sight.

Honourable senators, we do not know whether this climate change that we are beginning to witness is due to a normal cycle of warming and cooling or if it is just the beginning of global warming, caused by the unthinking, unheeding inventiveness of humankind. Either way, this situation will be with us for a long time and its effects will not be cheaply, easily or quickly reversible, or even reversible at all.

Governments at all levels must begin to educate people about ways and means to conserve water. We must stop wasting it in our present wanton fashion. I urge the federal government to begin a proactive program of positive incentives for industry to encourage the use of less water in manufacturing and in building.

Honourable senators, read your morning papers and see the future. If we do not voluntarily begin to conserve this most precious resource, water conservancy will inevitably be forced upon us.

• (1420)

### THE HONOURABLE MICHAEL A. MEIGHEN AND DR. KELLY MEIGHEN

CONGRATULATIONS ON RECEIPT OF HONORARY DOCTORATE  
DEGREES FROM MOUNT ALLISON UNIVERSITY

**Hon. Mabel M. DeWare:** Honourable senators, yesterday during Spring Convocation at Mount Allison University in New Brunswick, honorary degrees were conferred on a fellow senator and his charming wife. I would ask that you join me in congratulating Dr. Michael Meighen and Dr. Kelly Meighen.

### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senator, I introduce to you the pages who are here on exchange from the House of Commons this week.

Adrienne Fowlie is from Nepean, Ontario, and is studying environmental science and English at the University of Ottawa.

[Translation]

Mark Greenan is a political science student in the Social Sciences Faculty, University of Ottawa. Mark is a native of Summerside, Prince Edward Island. On my right is Deborah Kobluk, who is studying in the Arts Faculty at University of Ottawa.

[English]

She is majoring in English and is a native of Edmonton, Alberta.

On behalf of all honourable senators, I wish you welcome to the Senate. May you have an interesting and useful week with us.

[Translation]

## ROUTINE PROCEEDINGS

### MARINE LIABILITY BILL

#### REPORT OF COMMITTEE

**Hon. Lise Bacon,** Chair of the Standing Senate Committee on Transport and Communications, has the honour to table the following report:

Tuesday May 9, 2000

The Standing Senate Committee on Transport and Communications has the honour to present its

#### FOURTH REPORT

Your Committee, to which was referred Bill S-17, an Act respecting marine liability, and to validate certain by-laws and regulations has, in obedience to the Order of Reference of Tuesday, April 4, 2000, examined the said Bill and now reports the same with the following amendments:

1. *Page 10, Clause 29:* Replace lines 4 to 15 with the following:

“loss of life or personal injury to persons carried on a ship otherwise than under a contract of passenger carriage is the greater of

(a) 2,000,000 units of account; and

(b) 175,000 units of account multiplied by

(i) the number of passengers that the ship is authorized to carry according to its certificate under Part V of the *Canada Shipping Act*; or

(ii) if no certificate is required under that Part, the number of persons on board the ship.

- (3) Subsection (2) does not apply in respect of

(a) the master of a ship, a member of a ship's crew or any other person employed or engaged in any capacity on board a ship on the business of the ship; or

(b) a person carried on board a ship other than a ship operated for a commercial or public purpose”.

2. *Page 14, Clause 37:* Replace lines 31 to 39 with the following:

“the same or another place in Canada, either directly or by way of a place outside Canada; and

(b) the carriage by water, otherwise than under a contract of carriage, of persons or of persons and their luggage, excluding



(i) the master of a ship, a member of a ship's crew or any other person employed or engaged in any capacity on board a ship on the business of the ship, and

(ii) a person carried on board a ship other than a ship operated for a commercial or public purpose”.

Respectfully submitted,

LISE BACON  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Bacon, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

### PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill be placed on the Orders of the Day for second reading, Thursday next, May 11, 2000.

[Translation]

### BILL TO CHANGE NAME OF ELECTORAL DISTRICT OF RIMOUSKI—MITIS

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-445, to change the name of the electoral district of Rimouski—Mitis.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Rompkey, bill placed on the Orders of the Day for second reading on Thursday, May 11, 2000.

[ Senator Bacon ]

### CANADA-FRANCE INTER-PARLIAMENTARY ASSOCIATION

MEETING HELD IN PARIS, FRANCE—  
REPORT OF CANADIAN DELEGATION TABLED

**Hon. Gérard-A. Beaudoin:** Honourable senators, I have the honour of tabling the report of the Canadian group of the Canada-France Inter-Parliamentary Association, which took part in the meeting of the standing committee of the association in Paris, from March 6 to 10, 2000.

[English]

### QUESTION PERIOD

#### NATIONAL DEFENCE

##### REPLACEMENT OF SEA KING HELICOPTERS

**Hon. J. Michael Forrestall:** Honourable senators, I have a question for the Leader of the Government in the Senate.

I suggest that the comments made by me and by others over the past week have not been cries of mayday at all. However, let there be no doubt that we are certainly declaring a Pan alert.

As you know, those in authority who ignore a Pan are criminally liable, just as those who ignore a mayday are liable. It is just a matter of how long they will spend in prison.

Will the government continue to ignore the cry of “Pan, Pan, Pan,” or do they intend to initiate a program to replace the Sea King helicopters? Are we in fact facing the status quo? Have the decisions long since been taken? Does the government in fact have no intention of getting on with calling for the replacement program now or in the foreseeable future?

• (1430)

Which is it? It is not fair to the men and women who serve in these planes, nor is it fair to this chamber, that, although we continue to ask questions, the answers are not forthcoming.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for his continuing interest in this important subject. I also thank him for his clarification with respect to some of the comments that were made in this chamber last week.

I can appreciate the fact that the honourable senator wants to make the point very strongly that the situation requires attention. I would say that everyone involved, including the Minister of National Defence, has made it clear publicly that it is an extremely high priority. In fact, the minister has stated it is highest priority to replace that equipment, the reason being that the equipment is old and requires high levels of maintenance, as we have discussed.



The minister also recognizes — as does the honourable senator, who has raised the matter in this chamber — that the replacement will not happen overnight. Supposing there was an official announcement this afternoon, the government would still be committed to a significant program of repair, renovation and upgrading of the equipment to the extent of approximately \$50 million. That program apparently is proceeding quickly and should be completed within a reasonable time. It is not intended to preclude or to eliminate the priority that we have spoken of, but it does indicate that the minister is well aware of the urgency of this type of upgrading.

**Senator Forrestall:** Honourable senators, I had not really wanted to ask a supplementary, but the minister just told us once again that the government is responding to Sea King safety issues with a \$50 million upgrade program. Is the minister aware that virtually 50 per cent of that \$50 million is devoted to reducing sustainment costs? Just take a look at the Sea King weapon systems support plan, WSFP 1998-2003, dated 4 September, 1997. Simply put, we are the last country that uses the engine type and gear box in question. The cost and lack of availability of spare parts for both are the cause of the increase in spending — not the benevolence of a government concerned about the safety of the aircraft. We had to spend the money or the things would not have flown, safely or otherwise.

**Senator Boudreau:** Honourable senators, I appreciate the fact that the honourable senator refers to the report I provided him with respect to the nature of that \$50-million program. It is not an entirely complete report. I will not repeat information that I gave previously, but there are programs dealing with centre-section replacement and repair, an upgrade on the engine and replacement of the gear box, which by themselves involve \$46.5 million. Those are major repair items, and they are undertaken to address questions of ongoing safety concerns and, indeed, to extend the useful operational life of the aircraft. Some of the problems that have been referred to and reported by the honourable senator and others are traceable quite correctly to these various programs of upgrading. It is hoped that these expenditures, which are proceeding quickly, will address for the most part those ongoing problems.

### VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before I call on other senators, I should like to introduce a very distinguished visitor in our gallery: His Excellency Chairman Li Ruihuan, Chairman of the Chinese People's Political Consultative Conference of the People's Republic of China. Chairman Li is accompanied by a delegation from the Consultative Conference, which I might inform honourable senators is about the equivalent of the Senate in Canada.

Chairman Li and all members, we wish you welcome here in the Senate of Canada.

### ENVIRONMENT

#### ONTARIO—EFFECT OF DEVELOPMENT PROJECT ON OAK RIDGES MORaine

**Hon. Mira Spivak:** Honourable senators, I have a question for the Leader of the Government in the Senate about the Government of Canada's role in the issue of whether further development should occur in the Oak Ridges Moraine. There is a basis for that role because, in 1999, the then minister of the environment established an environmental assessment review panel to evaluate the Red Hill Creek Expressway, based on, in her words, the level of public concern surrounding the issue, and the potential of the project to have a significant adverse environmental effect.

The moraine feeds some 30 rivers, and development of these lands could have a dramatic impact on the way in which the moraine processes water. As to public concern, close to 3,000 residents of the Greater Toronto area, on three separate nights, attended public meetings to oppose development, and 465 scientists signed a document calling for the protection of the moraine. The Government of Ontario also has expressed its concern in this matter. The current Minister of the Environment, then responsible for Fisheries and Oceans, also recognized the local concerns and potential environmental impact in asking for a review of the proposed extension of the Red Hill Creek Expressway.

Why has the Government of Canada, through its Department of Fisheries and Oceans or through the Department of the Environment, not declared itself a responsible authority, as it did in that previous case, under the terms of the Canadian Environmental Assessment Act, and set up a review panel, as it did for the Red Hill Creek Expressway, in order to ensure that the people of the Greater Toronto area continue to have fresh water, rivers with fish, and confidence that their government truly cares about the environment in that area?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for that question. She wishes some very specific information about that project. I am not familiar with it in detail, so I think the prudent thing for me to do is to draw it to the attention of the Minister of the Environment, the then minister of fisheries, as she refers to him. He was, by the way, well-known for his strong concern and advocacy for environmental issues long before he took over the responsibility for that department. I will ask him exactly what the current position of the Government of Canada is, and perhaps what the role or position of the Government of Ontario and its Department of Environment might be.

**Senator Spivak:** Honourable senators, I am, of course, familiar with the credentials of the Minister of the Environment and consider him an admirable person. Nevertheless, it seems to me that there is a federal responsibility here. It is not just a matter of helping out the Government of Ontario. The responsibility is mandated under federal legislation and was exercised — to my pleasant surprise — during the issue of the Red Hill Creek Expressway.

We would not want to cast any political aspersions here, but in his conversation with the minister or the department, perhaps the Leader of the Government could also find out why, in the instance involving the Red Hill Creek Expressway, they came up to the plate very quickly, whereas in this instance, where there will be such a monumental impact on Ontario, they have not yet acted.

• (1440)

**Senator Boudreau:** Honourable senators, I will certainly direct that inquiry to the minister, along with the references Senator Spivak made to the other situation. It is to be hoped that the minister will address that issue as well in the response.

As the honourable senator knows, jurisdiction for the environment is shared by the provincial and federal governments. As I am not familiar in specific terms with the project the honourable senator has mentioned, I would be reluctant to draw any conclusions at this stage. I can certainly put the question to the minister, framed in the way that the honourable senator has requested.

## NATIONAL DEFENCE

### AGREEMENT ON ANTI-BALLISTIC MISSILE DEFENCE SYSTEM WITH UNITED STATES—DECISION-MAKING PROCESS

**Hon. Douglas Roche:** Honourable senators, my question is directed to the Leader of the Government in the Senate. Can the minister confirm, or otherwise explain, a story in *The Toronto Star* last week stating that a special cabinet committee has been struck to examine the controversial issue of whether Canada should join in the U.S. proposed national missile defence system?

Can the minister state in what way the government will make that decision? Will it be by a secret cabinet decision, by a parliamentary resolution, or by consultation with nuclear disarmament experts in Canada?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I did not hear the entire question. With respect to the first portion of it, I am not aware of any such committee at this time, but that may only indicate that I am not on it. However, I will make the inquiry on behalf of the honourable senator.

Could the honourable senator repeat the second part of his question?

**Senator Roche:** Honourable senators, I thank the minister for his response. Many people in Canada are seriously concerned about how a decision on Canada joining in the U.S. proposed missile defence system will be taken. *The Toronto Star* said that there will be a special cabinet committee struck to come to an early decision in this matter.

Has the government noted the statements made over the past two weeks at the Non-proliferation Treaty Review Conference held at the United Nations? At that conference the closest allies of the United States, particularly the United Kingdom and France, have criticized the missile defence system as dangerous to international stability and undermining of arms control agreements.

**Senator Boudreau:** Honourable senators, I am sure the government is aware of that statement. With respect to the U.S. missile defence system, the government has taken no position to date. In fact, the information I have indicates that no request has been received by the Canadian government from the United States or any of its departments to play a role in that project.

I cannot anticipate what action the government or cabinet may take. However, at the moment cabinet has no position on the matter. In fact, to the best of my present information and belief, cabinet has not been asked to take a position on it.

[Translation]

**Hon. Roch Bolduc:** Honourable senators, three months ago, the government had not expressed its position on this subject. The Minister of Foreign Affairs has opposed it, however. The Minister of National Defence has said that the matter is not resolved. There seems to be a lack of coordination between two ministers in cabinet. This is awkward for the government.

I should like to know whether the government leader's answer means that the government has no position. Three months ago, the government had not expressed its position clearly. However, at one point the government will have to make up its mind. This is what we want to know. When will the government make up its mind?

[English]

**Senator Boudreau:** Honourable senators, I would like to believe that my information is more up to date than three months old. The government has not taken a position on this issue. It is obviously involved with the United States, through NORAD, in the defence of the continent, but it has not taken a position on this issue.

More to the point, my most recent information — and I will check to ensure that I have the most current information — is that the request has not come forward. As long as the request has not come forward, there will be no occasion to take a position on it, one way or the other.

**Hon. Marcel Prud'homme:** Honourable senators, some of us were asked that question recently in another part of the world. It seems to us that there is a debate going on at cabinet, so it must have reached cabinet, at least for discussion. We all want to know who is winning at the moment; who is ahead. Is it the Minister of Foreign Affairs or the Minister of National Defence? Also, who is speaking for whom?



I had the honour to attend the United Nations Committee on Disarmament with Prime Minister Trudeau. Why is it that every time there is talk of non-proliferation treaties we immediately point fingers at Pakistan and India while remaining silent on the Middle East? It is no longer a sin to say publicly that Israel is a nuclear power. In the old days, it was a capital sin to even suggest that they had nuclear powers. Yet, the Canadian government and our ambassador to the UN persistently refuse to mention four of the non-signatories by pointing out only two; those being Pakistan and India. Either mention them all or talk generally about those who have not signed.

Will the minister report back to us by the end of the week on who is winning at the moment in the cabinet discussions?

Second, will he kindly ask that when the government mentions non-signatories to the non-proliferation treaty we name all of them? I know how embarrassing it is for some to mention them all, but Israel exists and they have contaminated all of the Middle East. They brought to the Middle East an arms race that is totally out of line with the principles of Canada, that great peacemaker in the world.

**Senator Boudreau:** Honourable senators, the second question is a little easier to answer than the first one. With respect to the second question, I will certainly convey the view of the honourable senator, that when any mention is made of non-signatories to the Nuclear Non-proliferation Treaty, all non-signatories should be named.

As to discussions that might occur within cabinet, I have more difficulty promising to relate anything with regard to them or, indeed, even if such discussions took place. However, if a decision is made by cabinet on this issue, I will convey the details of that decision at the earliest possible moment.

## FOREIGN AFFAIRS

### RESPONSE TO CIVIL WAR IN SIERRA LEONE

**Hon. A. Raynell Andreychuk:** Honourable senators, when the United Nations was either unable or unwilling to move effectively in Kosovo, Canada was among the countries that initiated creative action there under the guise of human security.

• (1450)

Would the Leader of the Government in the Senate agree that the human security issues in Sierra Leone today are equal to those that existed in Kosovo one year ago? What creative solutions is Canada proposing in light of the fact that the UN is either unable at the moment or unwilling to become more effective in that situation?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the Honourable Senator Andreychuk for raising that very timely issue, as we have seen it in the news particularly in the last number of days.

As the honourable senator probably knows, there is no Canadian embassy now in Sierra Leone. The embassy in India, a neighbouring country, has responsibility for the country of Sierra Leone.

I am informed that the department has maintained a travel advisory report advising Canadians not to travel to that country. More recently, in May, that travel advisory was updated. We are requesting not only that Canadians not travel to that country but that any Canadians in the country depart as quickly as possible.

Although we do not have a diplomatic presence in the country, I believe our minister visited that country approximately one week ago. Probably at some personal risk, he met with the various parties in an attempt to clearly indicate Canada's position that the peace agreement should be enforced and strengthened and that the United Nations presence should continue. I believe that is the case.

The decision is that the United Nations presence will continue. I am told that currently the largest United Nations presence anywhere in the world is in that location. I am also told that it will be strengthened further in an effort to deal with the issues of personal security that the honourable senator raises.

Honourable senators, I am not familiar enough with the situation in Sierra Leone to compare it to previous trouble spots in the world, but I do know that the situation is very serious. It is being monitored closely by the Department of Foreign Affairs. One hopes that the United Nations presence will be strengthened and that it can proceed with its role as peacekeeper, rather than maintaining the current situation, which is anything but peaceful.

**Senator Andreychuk:** My concern is that when it comes to Africa, we are always "working to strengthen the United Nations." However, when it comes to Europe, we intervene personally, as we did in Kosovo.

Honourable senators, I cannot think of a more desperate situation than the one in Sierra Leone. Children are losing limbs daily. It is frightening. The war is being fought with child soldiers. Surely, strengthening and adding more peacekeepers is not sufficient when we know the command and control structures are not working. If we are convinced that human security is to have some meaning in the world, it cannot just have meaning in Europe; it must have a global meaning.

What is the government's position with respect to utilizing the human security agenda to do something creative and different in Sierra Leone? For example, it is a diamond issue. In Angola, Canada led a good initiative to call immediately for an end to the illicit diamond trade. What is the Canadian government, which has put itself on the forefront of human security, doing in Sierra Leone today?



**Senator Boudreau:** Honourable senators, with respect to the situation in Sierra Leone, as I have indicated, the position of the Canadian government is to strengthen the efforts of the United Nations. It is very important that the United Nations succeed in its efforts in that particular theatre. It is not a one-country show. We endorse the efforts of the United Nations. In terms of personnel, I believe we had a very small presence in that country, and I think most of them routinely were rotated out. We have probably almost no one there now, perhaps very small presence.

The makeup of the United Nations force was determined by the United Nations in consultation, no doubt, with Canada as one of the world leaders in peacekeeping efforts, but our presence was not required in that fashion in this particular theatre. However, we will do what we can. I understand that 700 or 800 British soldiers have landed on the scene, and hopefully that will add to the personal security issue, at least around the capital.

Honourable senators, we should continue to support and strengthen the efforts of the United Nations in any way we can. This should include the provision of additional soldiers, as was already contemplated by other countries which had made that commitment at the request of the United Nations. I believe efforts are moving in that direction.

The other issue raised by the honourable senator concerns the commercial side of the impact of actions that government might take. That is an issue on which efforts will be ongoing, no doubt. In point of fact, there is some suggestion that the tenor of the conflict actually increased as the United Nations forces got closer to the source of the diamonds.

## UNITED NATIONS

### GOVERNMENT SUPPORT FOR CENTRE FOR VICTIMS OF TORTURE

**Hon. A. Raynell Andreychuk:** Honourable senators, would the government consider not only taking a leadership role in the Security Council at the United Nations to do something more and immediate in the Sierra Leone situation, but would it also consider strengthening its commitment to the Centre for Victims of Torture at the United Nations?

We have been meeting on land mines, and I fully support that initiative because of the innocent lives that are lost and the mutilations that occur, particularly to children. The mutilations going on now leave psychological and physical scars on those people, which will have a reverberating effect on that continent and the world. The last I looked, we supported the Centre for Victims of Torture with \$30,000. I understood that the minister would try to increase that figure to perhaps \$60,000 to \$100,000. The amount of \$30,000 simply is not effective, given what our colleagues around the world are doing.

Not only do I encourage immediate action by the government in Sierra Leone, but would the honourable leader consider the long-term implications so that some assistance can be given to these children?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, on both of those issues — the activity in the United Nations and assistance for the victims of this conflict — I will communicate Senator Andreychuk's inquiries to the minister and ask for his response.

## HEALTH

### RESPONSE TO ESCALATING DEMAND ON SYSTEM

**Hon. Donald H. Oliver:** Honourable senators, my question is for the Leader of the Government in the Senate. A new study by IMS Health Canada, a health information group, states that if current statistics on the health care utilization pattern of the baby boomer population remains the same as they get older, Canada will see a radical escalation in health care costs. According to IMS, baby boomers, Canadians age 40 to 59 who make up only 27 per cent of the population, are responsible for 52 per cent of the 22-million increase in doctors' visits in 1999.

How will the government fulfil the prescription drug requirements for an aging population whose usage of these drugs is on the increase? What happened to the national drug plan or pharmacare plan that was proposed by this government in 1993? Is it still part of the government's health care revitalization strategy, and if not, are there any alternative measures planned by this government to address these increasing demands?

• (1500)

**Hon. J. Bernard Boudreau (Leader of the Government):** The honourable senator raises an interesting issue. In the two years when I was not in public life, I was involved in a health-related activity. I attended a major conference in Toronto where the Minister of Health and the president of the Ontario Medical Association made a joint presentation, and that, in itself, was an accomplishment. They placed two charts next to each other. The first chart indicated the huge increase in costs per person, on an annual basis, upon reaching a certain age. The chart was divided demographically into various age groups, for example, zero to 30, 30 to 45, 45 to 60, and 60 and over.

The second chart contained the demographics on the Canadian population, that is, in effect, where the big bubble was located. The honourable senator is probably aware of David Foot's book entitled *Boom, Bust & Echo*. That bubble is passing through and it is about to hit the really expensive part.

The concern that the honourable senator brings forward is very real one. I always marvel at the fact that more people do not direct comment and attention to that very point, because it represents a huge challenge for all of us. It is probably the largest challenge the government has to face, in my view. I appreciate the honourable senator raising that matter.

How will the governments of Canada address that reality? Certainly, it will involve money. As we move forward, additional resources must be committed to the system to deal with it. However, the answer is not only money. When you look at those two charts you realize, very quickly, that you cannot feed money into the system fast enough to deal with that kind of bubble.

The provinces and the federal government will be discussing these issues very soon. In fact, there is some discussion already about another meeting of the health ministers, followed at some point by a meeting of the first ministers. These are the types of questions that must be asked. The answers do not necessarily involve simply feeding more money into the Canada Health and Social Transfer. The issue must be canvassed far more thoroughly. I believe that governments will have to put aside partisanship on this issue because it is a problem for every government in Canada, and it is probably the most significant challenge that we face.

**Senator Oliver:** Honourable senators, by that answer is the minister saying that more funding for this problem is not now included in the government's current health care revitalization strategy?

**Senator Boudreau:** Honourable senators, the short answer is that additional monies have been provided. However, as we move forward and as we deal with this issue, I can foresee that the commitment by all governments will have to increase.

[Later]

## VISITOR IN THE GALLERY

**The Hon. the Speaker *pro tempore*:** Honourable senators, before I recognize another speaker, I wish to introduce Mr. Robert Sturdy, who is in the gallery with his wife, Elizabeth. Mr. Sturdy is the President of the European Parliament's Delegation to Relations with Canada. He is in Canada to participate in the workshop on "Ensuring Food Safety" organized by the Canada-Europe Parliamentary Association.

Mr. Sturdy, we look forward to close and friendly relations with the European Parliament. Welcome to the Senate of Canada.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, first, I would like to call Item No. 4, under

"Government Business," resuming debate on Bill C-20, which is adjourned in the name of Senator Pitfield.

### BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

#### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. P. Michael Pitfield:** Honourable senators, it had been my intention today to speak at length about this legislation. Unfortunately, however, health problems intervened and the work that I have been preparing for you has not been completed to the standards and quality that I should like and that you deserve.

My purpose in rising on a point of order now is to apologize for that delay and to urge your continued patience as I try to prepare my case for your consideration next Thursday instead.

The problems that we are discussing are not only very complex but also have a long history. For reasons like those, they do not belong to one person or to one institution in our system of government or, for that matter, to one period of time. To the contrary, they belong to all of us — those of the future as well as those of the past — which is why it is so appropriate and important that they be examined by a Parliamentary committee.

The government seems prepared to think about the role of the House of Commons in flexible and subtle ways. I think everyone will welcome that. I would be surprised if they did not expect the Senate to be considered in a similar manner.

My concern is that the committee, like so many others in recent years, will be put in a position where it must accept material that is of less than first-class scholarship. Because I think it is so imperative that this job that we have before us is done well, I am asking for your patience in bringing this material to you.

The government has had little to say concerning the representation of interests of regionalism, individual rights, and diversity in the Constitution. All these issues are wrapped together. Surely there are ways in which the Senate, as an institution adequately reformed and removed from its splendid isolation, could be used to strengthen and support our constitutional objectives. Surely we should be able to have these questions examined by our committee.



Honourable senators, I am concerned that these sorts of questions be recognized and examined very thoroughly. I support the quality of the research that has been shown to me by our colleague Senator Joyal. The case that he has developed in these matters is very broad and well documented. It deserves to be carefully considered. It includes national sovereignty and the functions of the Senate as a national institution. It represents powerful arguments with which the government must deal.

• (1510)

With your patience and understanding, honourable senators, I trust we will be able to discharge that responsibility.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, following our distinguished colleague's comments on the point of order, we look forward to his comments on Thursday next.

[Translation]

**Hon. Melvin Perry Poirier:** Honourable senators, I am pleased to take part in the debate on Bill C-20. Several members of our house have expressed their views on this issue by looking at the bill from every possible angle.

A number of them have focussed on the role that the Senate will have in determining the clarity of the referendum question and majority. That role is not negligible, since the House of Commons will take into consideration the resolutions or official statements of the Senate on that issue.

I will confine my comments to the legitimacy of the bill and to the critical need that it meets.

Honourable senators, for at least 35 years, the Canadian political scene, and particularly the Quebec political scene, has been marked by the constant threat of Quebec's secession. There are various ways to face that threat. I shall mention four of them.

Some say that we must meet all the wishes of Quebec's ultranationalists, so as to keep them happy within our federation. The major problem with that approach is that it inevitably leads to political and constitutional excesses, since there is no way to satisfy these people.

Others propose a new round of constitutional negotiations, thus ignoring Canadians' lack of enthusiasm for such an exercise. The problem with this option is very obvious in that we still have present in our minds our past failures with that approach.

Others still are suggesting that we should not do anything, given the lack of concrete public support for a true separatist option. Personally, I think this is the worst possible avenue. I feel that, on the contrary, the Government of Canada must be ready for any contingency, which brings us to the fourth approach to the separatist issue in Quebec.

I believe that the most sensible and relevant approach to the problem is a balanced one, which consists in working day in and day out to improve our federation and to ensure that, should there

be a third referendum on sovereignty, Quebecers will not risk losing Canada over a misunderstanding, in other words, ensuring that the process of a third referendum meets the criteria and requirements of clarity. That is the approach being taken by the Government of Canada.

I need not argue long to show the relevance of such an approach. The survival of a country is the most fundamental matter on which a people may be called upon to pronounce. The requirement of clarity is therefore self-evident.

[English]

The referendums of 1980 and 1995 demonstrated that Quebec's separatist leaders would stop at nothing and would embrace any stratagem to try to garner majority support for their option. This aspect of the debate has already been examined at great length. Thus, I will not dwell on it any longer today. We must not forget that the smoke-and-mirror tactics of the PQ government impel us to act so as to ensure that Quebecers will not lose their country, Canada, unless they clearly state that that is what they want.

[Translation]

We are all the more within our rights to intervene because this bill is in every respect consistent with the Supreme Court opinion of August 1998. This opinion sets out the need for clarity in the referendum process.

Honourable senators, I wonder what opponents of this bill expect of us and how they see the government's role. It goes without saying that our country is dear to us and that we would be shirking our responsibilities if we failed to ensure the clarity of the referendum process. The first to complain would be Quebecers and they would be right.

In choosing this course, the Government of Canada is not depriving Quebecers of any rights. The Supreme Court opinion stipulates that, should there be a clear majority on a clear question, the Government of Canada would be obliged to enter into negotiations with respect to secession with the Government of Quebec. The bill gives effect to this opinion.

The text of the judgment indicates that it is up to the political actors to determine what a clear majority and a clear question are. The Government of Canada being, without a doubt, one of those actors, it has the responsibility of ensuring that it enters into such negotiations only if it deems that the question and the majority make it possible to determine the desire of the people of a province to secede from Canada.

The Government of Canada did not get involved in passage of this legislation with any enthusiasm. There are numerous other matters it must address but, as I have said, few of them are as basic as the very survival of a country.

We have a duty to all Canadians, those who came before us as well as those who will come after us, to make sure that this country will not be broken apart over a misunderstanding or a partisan political manoeuvre.



[English]

To be sure, this bill has come in for a certain amount of criticism. One such argument is that it was not necessary to legislate and that the court's opinion was sufficient in itself. That is a view I do not share, honourable senators.

The government had a duty to give effect to the Supreme Court's opinion and to give us the means to ensure that the approach taken by the PQ government complies with all the requirements of a democracy that cares about the rule of law. Bill C-20 gives effect to this desire for clarity, which is essential for a democracy to work properly.

[Translation]

Honourable senators, this government is betting on clarity. We are comfortable with this approach. Comfortable because on the one hand, it is imposed by logic and on the other, because we are convinced that, with clarity, Quebecers will never renounce Canada.

• (1520)

That is what all the opinion polls indicate, that a clear question free of confusion will yield but weak support for Quebec separation. A confused question, on the other hand, one for example that involves the concepts of association or partnership, generates stronger support for the sovereignists. This has been an observable trend since the establishment of the indépendantiste movement in Quebec.

[English]

Another argument against this bill is that it will only fan the flames of Quebec nationalism. However, I think it is appropriate, honourable senators, to define what is meant by "nationalism".

The notion of nationalism, as it is known in Quebec, does not necessarily imply separatism. Many Quebec leaders have expressed a healthy nationalism that has been a messenger of change without advocating Quebec's separation from Canada.

[Translation]

Above all, we have faith in the judgment of Quebecers. We are certain that, if a third referendum on sovereignty is to be imposed on them, Quebecers, in clarity, would reject the split.

For all these reasons, honourable senators, I support Bill C-20. We do not claim to believe that it alone will resolve the question of national unity, but we believe it to be a big step forward underscoring as it does the democratic legacy Quebecers share with other Canadians.

**Hon. Marcel Prud'homme:** Honourable senators, would Senator Perry Poirier answer a few questions?

**Senator Perry Poirier:** Certainly.

**Senator Prud'homme:** Would the honourable senator not consider that there should not only be a committee to study this

question, but that we could consider a Senate committee travelling across Canada? If we pass this bill, we will eliminate the Senate from the discussion process. Is a single committee sufficient to study this issue? Given the importance of the subject under discussion, would it not be appropriate for this committee to travel across Canada to understand and grasp the scope of this very important bill?

**Senator Perry Poirier:** Honourable senators, I think Senator Prud'homme has a very good idea. A committee touring Canada from one end to the other could answer the question more easily than a single committee sitting here in Ottawa.

[English]

**Hon. Nicholas W. Taylor:** Honourable senators, I believe most of my fellow senators on this side realize I am not rising to support Bill C-20. I will be speaking against Bill C-20.

Having been out of the country for the last couple of weeks, I had the *Debates* sent to me and I have kept abreast of the subject. I believe I am the first westerner to speak on the bill. I shall not cover the whole bill; rather, I shall stick to the question of precedence and the question of where the Senate fits in, in the whole scheme of things.

I might add, though, that too often, when we throw a rock into the pool here, the only ripple we think we create will be in Ottawa. We would do well to remember — and I do support the clarity portion of this bill — that we have separatists in Alberta. In fact, they were the second largest party in the early 1980s. Who knows? It may come back again. They are getting wealthy enough, and, like most wealthy people, they may like to pick up their money, move somewhere else, or put a fence around their money. The concept of separatism may not be dead yet.

Honourable senators, the notion of looking at the clarity bill, or clarifying how a province can separate, is something on which I wish to congratulate the government. I fully support that concept. However, I believe there is one gaping hole in it, and that is cutting the Senate out of the process. That causes a fatal flaw in Bill C-20.

Honourable senators, if we split the discussion on the question of whether or not the Senate should participate in the bill, we can look at both the political and legal repercussions. Let us look at the legal aspect first. The speeches given by the Leader of the Government in the Senate and then later by Senator Fraser seemed based on the fact that they thought the Supreme Court's political actors are the elected people and should be the ones making the decision. At that time, I had a quick meeting with the minister responsible in the other place, and I asked why the Senate was excluded. I got the very blunt answer back that it was owing to the fact that the Supreme Court would have made the law *ultra vires*, or illegal, if the Senate was involved. In further pursuing that area, and in talking to research staff, I concluded that the mess we got into here was caused by some researcher who could not distinguish between a political actor and an elected representative.

Coming from Alberta, I must admit that it is not hard to get actors and elected representatives mixed up. However, a mistake like that should not have any place in the basic research of putting together a bit of legislation. In other words, if the term "political actors" had been defined correctly, as it should have been in the first place, I do not think there would have been any exclusion of the Senate.

Honourable senators, some people would say, "Well, Senator Taylor, you are being too charitable. Some people have a long and distinguished record of trying to put banana peelings in front of the Senate, and this was not an accident; this was deliberate." I prefer, being from the West and having seen the clear blue air of the Rockies, to think that, indeed, it was a mistake rather than anything deliberately planned.

Honourable senators, we can go on from there; we can look into the question of the Senate and the regional vote.

• (1530)

Bear in mind, honourable senators, that if the House of Commons is to decide any issue, it must recognize that nearly 60 per cent of voters reside in Ontario and Quebec. Perhaps in the next generation or two, two-thirds of the national vote will centre in one house. In the Senate, though, Quebec and Ontario will always be restricted to less than 50 per cent. If there is any flywheel or any sort of hedge against the dictatorship of the majority or mob rule, it is the Senate. In the fields of religion, race and resources, the Senate is it.

You may say that, in this case, we are only speaking about one province. The point is that once you open the door, you never know how many horses will get out.

I will quote from Senator Fraser's speech found at page 914 in the *Debates of the Senate* on March 30. Senator Fraser is the chair of our caucus, a very intelligent and worthy person. She states:

I find myself, however, powerfully affected by the argument that the focus of Bill C-20, the government's approach to the possible secession of a province of Canada is another such subject, something that is so fundamentally, inherently political, so directly and intimately bound up with the will of the people, that it, too, falls into that small but crucial class where it is the House of Commons and not Parliament as a whole that must take the decision and, of course, bear the responsibility of doing so.

That approaches sedition. That is a very dangerous policy indeed. Do you realize that Senator Fraser is not only the chairman of caucus but that she probably had this speech vetted by the PMO, speaking *ex cathedra*? She did not just rumble along on this topic between tea times.

Senator Fraser may well deny this and she will have a chance to ask a question in a moment. She is, in my opinion, a very important person and one whose opinion I follow closely.

[ Senator Taylor ]

I must ask what is happening here. Are these matters so fundamentally intimate and binding that they must be carried out by the House of Commons? Who constitutionally says so? Is it Quebec this time? Will it be aboriginal rights another time? How about this, those of you from the Maritimes and from the West? How about a national energy policy?

**Some Hon. Senators:** Oh, oh!

**Senator Taylor:** Just suppose, dear old Newfoundland and Nova Scotia, that the House of Commons decides to demand a national energy policy, while the world price of oil is sitting at \$80 per barrel? They could demand a change in the Constitution. They could decide they made a stupid mistake giving resources to the Maritimes and the West. What if they say they must change things by a bill, but that the matter is so important they prefer not to ask the Senate about it?

Let us go a step further. Suppose there is a question on the aboriginal languages in the high Arctic. What if the House of Commons decides, for the good of the country, not to protect northern businesses from an invasion by southern businessmen by putting the native language in some sort of an artificial corset and letting only the House of Commons vote on it?

**Some Hon. Senators:** Oh, oh!

**Senator Taylor:** Going on from there, the whole area becomes somewhat of a race. What is supposed to stop them?

I just came back from an inter-parliamentary conference in Jordan. The Israelis, the Arabs and the Iranians were all arguing in their different racial groups. We must realize how fortunate we are in Canada to enjoy an almost-non-racial society. Why is it non-racial? We do advertize it as such. I do not think we have little prejudice just because we were born under bright sun, blue skies and drank the clear water. Actually, my view of mankind is jaundiced enough that I believe the reason for our lack of prejudice is our lack of enough power to screw the other guy, so we all have to get along.

**An Hon. Senator:** I agree with you.

**Hon. Senators:** Hear, hear!

**Senator Taylor:** Bearing that in mind, why should we turn around, in this bill, and give to a majority house — which requires agreement only from Ontario and Quebec — the right to trample on the rights of everyone else?

The Senate is here for a very good reason. We should think very seriously indeed before voting on any sort of resolution that leaves the Senate out of the process. This precedent would make it very easy for the House of Commons to decide that it can administer this country by themselves. A bill was not necessary here. A resolution could have been passed, a resolution within their own house. They did not need to come here and ask us to cut our own throat.

**Senator Prud'homme:** Hear, hear!



**Senator Taylor:** For some reason, there is some repository of "wisdom" over there that thinks an elected majority from two provinces can, some how or other, never go wrong. I do not buy that for an instant.

Before I sit down, I want to touch on the strategy.

**Senator Prud'homme:** Oh, oh!

**Senator Taylor:** I am not sure what I have done wrong, honourable senators, but if my friend Senator Prud'homme is cheering me on, I will need to re-read my words.

Concerning strategy, there is no question that the Liberal Party is the only party in the House of Commons presently which is arguing for a majority greater than 50-plus-1. They are calling for 66 2/3.

What do you suppose will happen if after the next election we have a minority government? The question we are discussing today will not even get to the Senate. The Senate will be the only body demanding more than 50-plus-1 for final separation.

Suppose — terror of terrors — that out of the West comes that party which was only a small speck of dust one year ago. People used to hold their sides and laugh when I said, "Watch Reform." That speck of dust just got larger at the end of last year. Now they can almost hear the thundering hooves —

**Senator Cools:** He is a poet!

**Senator Taylor:** — and a loud cry, Frankie Lane style, as we watch Stockwell Day, Preston Manning and Joe Clark galloping across the nation. One of them could end up as Prime Minister. It could happen. Democracies do funny things. Then we would be awfully thankful, those of us who believe in the two-thirds majority, that the Senate still stands between the House of Commons and their 50 per cent plus 1.

The strategy of this bill absolutely befuddles me. In closing, I say we should vote against sending this bill to committee because it is fatally flawed. It is a bad bill.

The PMO and the people who drafted this bill should swallow their pride and realize that the idea of cutting the Senate, never mind the rest of the bill, was based on a false conclusion by some researchers who mixed up political actors with elected representatives. That is very easy to do, if you watch Question Period in the other place.

Some people say that senators are appointed to do whatever the Prime Minister says. I have never been able to quite understand why the Supreme Court judges are appointed to age 75 because they are supposed to be impartial, unaffected by politics. However, senators, also appointed to age 75, supposedly must kiss the hand that appointed them. Something is wrong there. I like to think that a certain amount of independence was involved in putting me in this position.

**Some Hon. Senators:** Hear, hear!

**Senator Taylor:** I would paraphrase that great parliamentarian, Sir Winston Churchill. He said he was not elected to preside over the dissolution of the British Empire. I do not feel I was appointed to preside over the dissolution of the Senate.

**Some Hon. Senators:** Hear, hear!

**Hon. John G. Bryden:** Would the Honourable Senator Taylor accept a question?

**Senator Taylor:** I shall be happy to entertain a question from Senator Bryden.

**Senator Bryden:** Honourable senators, that was a wonderful speech, whether or not one agrees with it, and a brave one. I compliment the honourable senator on it.

The honourable senator focussed his concern primarily on the fact that one of the most valuable functions of the Senate is the protection of minorities and the regions of our country. Indeed, he did not include this because he could not include everything. However, I will ask the question, even though it is rhetorical. Was he aware that the Maritime provinces, as they then were, would not have entered into Confederation if the parties had not agreed that there would be a senate, an upper house, that would adequately represent the views of the regions in the event that Upper and Lower Canada were in a position of majority and, therefore, in a position to control the House of Commons — indeed, the situation that exists today?

• (1540)

**Senator Taylor:** Yes, honourable senators, I was. I am glad Senator Bryden emphasized that point. After all these years, that is perhaps one of the reasons honourable senators will get their kick at the cat. If the oil and gas reserves turn out to be as large as some suggest, there may be a lot of people going down to Halifax to kiss my honourable friend's ring.

**Hon. Joan Fraser:** Honourable senators, I wonder if Senator Taylor would allow me to set his mind slightly at rest. He suggested that my remarks earlier on this bill might have been vetted by the Prime Minister's Office.

**The Hon. the Speaker pro tempore:** Honourable senators, I regret having to interrupt Senator Fraser, but the 15-minute time period has expired. Is Senator Taylor asking for an extension of time?

**Senator Taylor:** Honourable senators, I seek leave for time for questions.

**The Hon. the Speaker pro tempore:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.



**Senator Fraser:** Honourable senators, I wonder if it would set Honourable Senator Taylor's mind at rest to know that my remarks were not vetted by anyone. No one outside my office knew what I was to say on this bill. Perhaps some people wish they had vetted the remarks, but they did not. They were the fruit of my own reflection after considerable agonizing about many of the points that Senator Taylor raised.

**Senator Taylor:** Honourable senators, I am relieved by the statement of the honourable senator, although I must say I am a bit surprised at her recklessness. When I read the speech, as I said, it was so fundamentally and inherently political that it did, as an old farm boy from out West, frighten the dickens out of me.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I also have a question for Senator Taylor. Given the *realpolitik* of this place and of this town, and given what I think is the overwhelming agreement with the thesis that we have a historical challenge as senators these days in securing, maintaining and protecting the integrity of this house and its consent, what kind of an amendment does the honourable senator think we would be able to bring forward to give the level of comfort that the government would need? What could we in this house who support the principle of the bill in general but who may have difficulties with various elements of it, such as the issue of the role of the Senate, propose as an amendment that would find favour with the government so that the government would see that it is only the integrity of our bicameral system that is being addressed? Do we need an amendment that would speak to the time line — in other words, that the Senate would not be holding up the consideration of the clarity of the question? Does the honourable senator think the government would be comfortable with an amendment that envisaged a joint committee of the House of Commons and the Senate that would look at the clarity of the question? What help might the honourable senator give on that particular consideration?

**Senator Taylor:** Honourable senators, I have not drafted an amendment, of course, because, as the honourable senator says, there are other issues besides the place of the Senate. One of the things that has always impressed me, and sometimes amazed me, is how the committee system works so well in the Senate. I had always thought that a camel, for instance, was a cow that was put together by a committee and things went wrong. In general, though, committees here in the Senate seem to turn out a good product. Thus, I would think that an issue such as this would be well within the capacity of one of our committees to study.

While we are on the subject of committees, I am somewhat disappointed that we are talking about a new committee. When we start changing committees around, we telegraph a message to the public that we are cooking the process a bit, which also sets a precedent for situations down the road. If we have an agriculture committee that is against the Wheat Board, we put together another committee that is for the Wheat Board. If we have a foreign affairs committee that is against NATO, we put one together that is pro-NATO. That manipulation can go on and on. When we start cooking up new committees, there is a concern that we are trying to get the answer we wanted ahead of time rather than letting the committee go right at it.

I am not a member of the Standing Senate Committee on Legal and Constitutional Affairs, but I know there are some real tigers on both sides of that committee, which I think is okay.

**Hon. Anne C. Cools:** Honourable senators, would the Honourable Senator Taylor be so kind as to take another question?

**Senator Taylor:** Certainly.

**Senator Cools:** Honourable senators, I am sure that Senator Taylor is well informed, as are most honourable senators, of Mr. Stéphane Dion's attitude with respect to the Senate. I am sure he has read in the press, as I have on numerous occasions, that Mr. Dion feels that the Senate should be abolished. No secret has been made of that and no attempt has ever been made to conceal it. No attempt has been made to be attentive to party loyalty or to the constitution of the Senate or its history.

As Senator Taylor will recall, some years ago a question was put to Mr. Dion from the floor of a Liberal Party convention. The question had to do with the choice of nationalism over political parties. I believe Mr. Dion made his famous statement, "My country before my party." Does Honourable Senator Taylor recall that statement?

**Senator Taylor:** I do.

**Senator Cools:** The statement was made in response to whether Mr. Charest should be in Quebec, along the lines of how does a Conservative become a Liberal, and Mr. Dion responded with these very famous words. They were quoted nationally across the country. They were even quoted in this chamber. He stated, "I believe in my country before my party."

Since I do not believe Mr. Dion would discuss this bill with me, I am wondering if the honourable senator would have any idea if Mr. Dion's statement, "My country before my party," applies to Liberal senators.

**Senator Taylor:** I do not know about putting the country before my party, but it sounds like a good policy, actually. My saintly old grandmother said she always voted for the person. When I asked her how she voted, she had voted Conservative all her life because she had never found another person worth voting for. You might argue that a good party does what the country wants, so the country always appears to be number one. I think I should be number one.

• (1550)

As far as Mr. Dion is concerned, I know of his past. I had meeting with him. We know each other very well. We have attended the Calgary Stampede together. When you do the Stampede together, a bonding occurs that those from the East may not realize. It is not quite the same as pricking your finger and bonding together, but there is a bonding that goes on there when you watch the animals being tortured. The bull riding, of course, appeals to any politician.

Mr. Dion was the one who said that he thought the Supreme Court would have ruled the bill out of order if it had allowed for the Senate, clearly based on the idea that the elected representatives should decide the matter. I believe that much of this debate about the Senate is based on a mistake. Somebody with a slip of the pen has led to a wrong interpretation.

Since then, I have not had a meeting with him. However, I certainly got from his lips that he thought if the bill had left the Senate in there in the normal position, it would be illegal in the eyes of the Supreme Court.

This leads to two questions. I know Senator Cools does not love the Supreme Court any more than I do. The Supreme Court could decide, as they did in the lobster case, and redefine what a political actor means. I do not know if anyone will go to court and ask for a ruling on what is a political actor. The fact is, as of now, Mr. Dion's researchers have interpreted the ruling to include only elected representatives.

**Senator Cools:** Honourable senators, many of us who have read the Supreme Court decision in this matter were mesmerized by the lack of clarity and precision in the judgment itself. Certainly, courts write about the powers of Parliament and prime ministers and enacting statutes. It is beyond credibility that any such careless, imprecise terms could be applied accidentally.

Senator Taylor was alluding to the question that I put previously. My secretary, who is listening downstairs through the electronic system has just sent me the newspaper article handed to me by a page. The article is from the *Montreal Gazette*, Sunday, March 22, 1998, and is by Joan Bryden. The article reads as follows:

...Intergovernmental Affairs Minister Stéphane Dion, who won the most prolonged, spontaneous ovation for the shortest answer.

"My country before my party," Dion said succinctly, responding to a delegate who questioned why the government is letting Charest, the leader of the 'fifth party', be portrayed as the champion of federalism.

Perhaps we may not settle this question here, but it is a question that could be asked of Mr. Dion when he comes before us.

**Hon. Charlie Watt:** Honourable senators, in regard to Bill C-20, I should like to raise a most compelling issue. I address honourable senators today as both a senator and an Inuk.

The issue to which I refer was not fairly considered by the House of Commons. I am referring to their urgent need to ensure that the aboriginal peoples of Canada, especially those in the province that is proposing to secede, will be direct participants in any future secession negotiations. Therefore, I urge the Senate to amend Bill C-20 to expressly include aboriginal peoples as direct participants.

Aboriginal people such as myself, who live in the province of Quebec, know that the threat of Quebec secession is very real. As reported in a front page article in the *Montreal Gazette* on May 8, the Quebec government is now launching a major offensive toward Quebec sovereignty. In this regard, Premier Lucien Bouchard has declared: "Our objective, our obsession, is the sovereignty of Quebec, as soon as possible."

In addition, in Quebec's latest version of Bill 99, the Quebec government is seeking to deny aboriginal peoples the status of distinct peoples. We are being forced to identify ourselves as part of a single "Quebec people." We are being denied our rights to self-identification and self-determination. In any future Quebec referendum on secession, our distinct voice will be drowned out. These acts by the Quebec government are grave violations of our human rights.

Over the years, aboriginal peoples in Quebec have contributed immensely to the secession debate. We have held our own referendums in order to express our democratic will to remain with our traditional territory in Canada. We have participated as interveners in Quebec secession references. Many of us are continuing our efforts to ensure that Quebec does not separate from Canada.

Yet, we still find that our efforts and positions are being weakened by the actions of the federal government. I am referring here to the failure of Bill C-20 to guarantee the participation of aboriginal peoples in any future secession negotiations. We have lived and governed ourselves for thousands of years in what is now known as Canada, yet we are still being denied equal treatment and respect.

During the debate on the third reading of Bill C-20 in the House of Commons, Intergovernmental Affairs Minister Stéphane Dion confirmed that section 35.1 of the Constitution Act, 1982, establishes a binding principle. This principle requires the federal and provincial governments to invite aboriginal people to participate in discussions on any constitutional amendments affecting us. Mr. Dion claims that Bill C-20 respects that principle since it does not limit any future secession negotiations to solely federal and provincial governments.

Mr. Dion acknowledges that his government did not expressly include aboriginal peoples in Bill C-20 as participants in any future secession negotiations. He feels the bill should not "go beyond the Court's Reference by creating an obligation for actors other than those to which the Court specifically assigned" a duty to negotiate secession. In regard to the aboriginal peoples, this argument is simply not valid.

First, our participation in constitutional negotiations is already expressly contemplated in section 35.1 of the Constitution Act, 1982. Second, the James Bay and Northern Quebec Agreement and other treaties with aboriginal peoples in Quebec cannot be altered without aboriginal consent. They reinforce the role of aboriginal peoples as distinct "political actors" who must participate fully and directly in any future secession negotiations.



Third, it is ridiculous for the federal government to claim that it did not include aboriginal people as a participant, since it did not wish to impose any obligations on us to negotiate secession. Aboriginal peoples have constantly stated that we must represent ourselves and participate directly in secession negotiations. The government has a fiduciary obligation to act according to our wishes and our constitutional status and rights.

It is an unacceptable double standard to expressly include federal and provincial governments in Bill C-20 as participants in future secession negotiation and, at the same time, omit aboriginal peoples. In the Quebec secession reference, the Supreme Court did not give such authority to the Government or Parliament of Canada.

• (1600)

Consistent with the principles of democracy, federalism, and the protection of aboriginal and treaty rights, Bill C-20 must be amended to include aboriginal peoples as direct participants in any future secession negotiations. Today, I am providing you with proposed amendments that would achieve that result. These amendments are totally consistent with the spirit and letter of the Supreme Court judgment and with Canada's Constitution. The amendments are also fully consistent with the treaty, aboriginal, and other human rights of aboriginal people.

The Senate of Canada was created to provide a voice to the regions and peoples who might not otherwise be heard. It is the chamber of sober second thought. Therefore, I strongly urge honourable senators to amend Bill C-20. The Senate should not be party to the same acts of exclusion of aboriginal peoples as has marked Canada's history. The Senate should not, in effect, assist the breakup of Canada by weakening the status of aboriginal peoples in the Quebec secession context.

I should like to have these proposed amendments dealt with at committee rather than in the Senate chamber.

**Hon. Lowell Murray:** Does the honourable senator believe that the relationship of the aboriginal peoples of Quebec to the federal Crown and federal Parliament could be changed without their consent? Could the court and provinces, in the course of a secession agreement, simply transfer responsibility for aboriginal peoples from the federal Crown and Parliament to some new entity outside Canada without the consent of the aboriginal peoples of Quebec? Also, what does the senator think the government's view is on this?

**Senator Watt:** Honourable senators, I do not believe that the Government of Canada or the provinces, singly or jointly, have the authority to make that decision without consulting the aboriginal people.

**Senator Murray:** Honourable senators, my point was not only one of consultation. As my friend has pointed out in his speech, one would think that consultation is guaranteed under section 35.1. My question is whether, as a constitutional matter, the aboriginal peoples could be transferred out from under the

jurisdiction of the federal Crown and Parliament without their consent. That is a matter that we may want to put to the government at some point.

**Senator Watt:** Honourable senators, allow me to elaborate on why aboriginal peoples cannot simply be transferred from federal to provincial jurisdiction. The Constitution clearly states, in section 35, that if there is to be any alteration to aboriginal status, the aboriginal peoples must be consulted and they must provide consent.

More important, the only existing agreement between the Government of Canada and the Province of Quebec is the James Bay and Northern Quebec Agreement, which was signed in 1975. It is considered to be a modern-day treaty. If there is any alteration to the Constitution, that text will be impacted in many ways. For that reason, it is more important that the aboriginal peoples are direct participants in whatever negotiations take place with regard to secession.

**Senator Prud'homme:** Honourable senators, I always listen with great interest to matters pertaining to the future of our country. I am afraid that there is sometimes a lack of sensitivity on what Canada is all about. I have seen that for the seven years that I have been in the Senate, and I have seen it often in the House of Commons.

This is one of the infrequent occasions that we will have to demonstrate why the Senate was created. We had a great occasion with regard to a promise made to the people in Newfoundland that their school system would never be touched. Democracy obligated us to take away the rights of people who joined Canada in 1949. At least we had a long debate. I strongly urged the Senate to go to Newfoundland, and we did. I believe that the Senate did its duty.

Senator Watt said that he intends to propose an amendment but would prefer to move it in committee rather than here. I am of the opinion that nothing will come of the committee study. I do not want to prejudge what will happen there, but we can already see a trend developing of the members who are being considered for that committee not being in a mood to accept amendments. It may be unfair, but that is my perception.

Would it not be wiser, therefore, for Senator Watt to move his amendments here? If he decides that he should do so, but the Speaker rules that, as Senator Watt has finished his speech, he is no longer entitled to do so, perhaps he could convince a senator who has yet to speak to move those amendments at second reading in order to dispose of them one way or the other. In that way, Senator Watt would have the opportunity to move them again in committee.

It seems evident to me that the House of Commons is in a mood to adopt any amendments to Bill C-20. I have spoken with a large number of members from various parties. They do not want the Senate to be considered and they do not want the Senate to tamper with "their Lords," as I now call them. They do not want us to tamper with what they have already decided.



• (1610)

Honourable senators know my sensitivity to the first Canadians. We tend to forget about that, but I have not. I have always accommodated them. I changed my approach to Canada when I started to meet people like Senator Watt and Senator Chalifoux and all these people throughout Canada.

**Senator Watt:** I thank Senator Prud'homme for his interest and also the sincerity of his point and not wanting me to miss the chance to highlight the actual amendments.

Senator Prud'homme also raised the issue of sensitivity and the need to require some clear thinking and understanding, as well as the need to restore respect, which quite often does not exist at all.

I am also relying heavily on our committee members to take this matter seriously at the committee level. They would have much more time to properly screen the matter. Hopefully, it will also educate the House of Commons and the Canadian public because at times they do require education.

For that reason, rather than do what Senator Prud'homme is proposing I do, I would put my faith in the committee that will be handling this issue. However, if nothing happens at that committee, I do not think I would be prevented at third reading from introducing those amendments. For some reason, if the committee chooses not to introduce the amendments, then I would still have the opportunity to put forward the amendments.

**Senator Prud'homme:** Honourable senators, I am satisfied with the answer. I think sometimes we are afraid to say we are satisfied with the answers given, but I am very satisfied.

It so happens that I sat on a very touchy committee with some of the senators that I note will be sitting on this committee. Their sense of fairness and honesty was evident then. I see one in particular who sat on a special committee on veterans affairs. Senator Watt is right: That experience served well. Their televised hearings served to educate Canadians. I will put my faith in Senator Watt. Of course, everything depends on whether this bill reaches committee, and it has not reached that stage yet.

**The Hon. the Speaker pro tempore:** Senator Cools, I regret that time has expired. Are you asking for an extension of the allotted time?

**Senator Cools:** Honourable senators, I have one quick question.

**The Hon. the Speaker pro tempore:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

**Senator Cools:** I thank Senator Watt for raising what I think are very important questions about our first peoples. He has said he will leave matters to the committee. If the committee does not make an amendment as he would wish, he would be content, then, to move an amendment himself at third reading.

The task before Senator Watt is somewhat daunting. The first task and the first item on the agenda should be to get the committee to consider the issues he has raised so that the committee may consider amending the bill.

Is Senator Watt contemplating moving an instruction asking the committee to, in particular, study the impact of Bill C-20 on the James Bay treaty and the other related First Nations issues?

**Senator Watt:** I thank Senator Cools for her question. I have actually spoken to senators on a one-to-one basis, those who have mentioned that they will become members of the committee. I have not spoken to them all. I still intend to emphasize how important this matter is to the other committee members when the committee is put together.

On motion of Senator Joyal, debate adjourned.

## MODERNIZATION OF BENEFITS AND OBLIGATIONS BILL

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Pépin, seconded by the Honourable Senator Maheu, for the second reading of Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations.

**Hon. Anne C. Cools:** Honourable senators, I rise to speak to second reading of Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations.

Senator Lucie Pépin, the sponsor of Bill C-23, commenced second reading debate a few days ago. In her response to a question from Senator Fernand Robichaud about family members living together out of economic need, Senator Pépin said at page 1190 of Hansard:

You are right when you say that when several people live together in a family, there is a relation of economic dependency. However, after examining the obligations and the scope of such a bill, the government has concluded that this situation should be dealt with in a separate bill.

Since these people do not live as couples, it would be better to keep both types of situations separate instead of joining them in a single bill, because they are different.

Honourable senators, Senator Pépin's response on the question of economic dependency is starkly different from Minister of Justice Anne McLellan's response on this matter of economic dependency and relationships some years ago. Before the Standing Senate Committee on Legal and Constitutional Affairs on September 23, 1998, on Bill C-37, to amend the Judges' Act, Minister McLellan said that she and her department were examining the extension of benefits to all relationships of economic dependency. She told the Senate committee the following, as reported at page 31:20 of the committee proceedings:

I will be very candid: This government's expressed approach to this is that we will deal with every case on a case-by-case basis. The court has said that it will take a similar approach. However, I would remind honourable senators — and I said this in response to Senator Bryden — that we are doing policy work that potentially speaks to a fundamental change to whom benefits might be extended within Canadian society, at least within the federal jurisdiction, and that we do not want to restrict ourselves to a discussion simply of same sex or opposite sex, but to consider a more legitimate question in Canadian society which is one of true dependency. When that work is done, as I have already indicated, we may return to both you and the House of Commons with an omnibus piece of legislation which will deal with the extension of benefits or entitlements of one sort or another on the basis of dependency. That work is well on its way, and my colleagues and I will be talking about it in detail starting next week.

Honourable senators, at some point in time, the minister abandoned her intention as stated before the committee and moved to this mode of extending benefits based on sex and sexual activity. It is a question that I hope the committee will examine during its study on Bill C-23 and will inquire of the minister how is it and why is it that she changed her mind.

Honourable senators, last year, Bill C-78, to establish the Public Sector Pension Investment Board, was before the Senate. Clause 75 of Bill C-78 used the words "in a relationship of a conjugal nature." I spoke here in this chamber on June 16 and September 10, 1999. I objected to those words, particularly the words "of a conjugal nature." I am saddened that almost a year later the Minister of Justice has yet again declined to heed my counsel and did not draft the bill adequately to reflect its policy objectives. At that time, I had based my objection largely on the judicial activism of the courts and also on the risk that such a definition would pose to marriage as a social and religious institution. I asserted at the time that the term "conjugal" was a distinct term of matrimonial law.

● (1620)

On June 16, I told the Senate that the government must simply find a way to accommodate the concerns and interests of homosexual persons for pension benefits without any further diminution of marriage. I sincerely believe, honourable senators, that the government has a duty to balance these interests and that it is entirely possible to draw up and bring forth a bill that can balance both of these questions.

The government must cease manipulating the words and the accompanying legal meaning of the words "man," "woman," "husband," "wife," "marriage," "spouse," and now "conjugal." The legal and definitional manipulation, so rampant in the courts and in government, is cruel, divisive, prejudiced and unnecessary. The term "conjugal relationship" is a marital or matrimonial term, and "marriage" means between a man and a woman.

Honourable senators, marriage was originally a sacrament of the Roman Catholic Church, proscribed by canon law. That

canon law was later underwritten by civil, common, and, in some jurisdictions, statute law. I should like to quote the Solemnization of Marriage Service found in the Anglican Church's 1549 *Book of Common Prayer*. The prayer book's marriage service states, in part at page 564:

Matrimony was ordained for the hallowing of the union betwixt man and woman; for the procreation of children to be brought up in the fear and nurture of the Lord; and for the mutual society, help, and comfort, that the one ought to have of the other, in both prosperity and adversity.

This concept of marriage, honourable senators, has served humanity for a few hundreds of years now and I think it is important that this concept of marriage must not be diminished and undermined. Marriage as a social institution should absolutely be protected.

Honourable senators, I wish to speak now to the dictionary definitions of the word "conjugal" and the plain meaning of the word. I shall explain the word's origins. *The Shorter Oxford English Dictionary* defines "conjugal" as:

Of or pertaining to marriage, or to husband and wife in their relationship to each other, matrimonial.

The term "conjugal" had its genesis in the Latin term *coniugalis* or *conjugalis* — in Latin, "I's replace "J's — and means "relating to marriage." There are several Latin words for marriage and the different aspects of marriage. They include *coniugium*, *matrimonium*, *nuptiae*, *conubium*, *consortium*. There are many more words. These are just some of the matrimonial terms. In English, these terms mean respectively, conjugal, matrimonial, nuptial, connubial, and consortium, and all are expressions of the several dimensions and elements of marriage, and matrimonial law. The celebratory festival itself was the *nuptiae*, nuptials; the *coniugium*, conjugal, was the obligation to bring forth offspring in marriage; the *consortium* was the right and duty to sexual performance of one partner to the other; and the *matrimonium* being the several obligations pledged to each other and to the *familia*. The unmistakable and defining characteristic of a conjugal relationship rests in the blessing of the capability to bring forth issue, offspring, children, in marriage. For centuries, the weight of jurisprudence and law has supported this. This proposed change is revolutionary and unsupported by history.

Honourable senators, the term "conjugal" is a matrimonial term and simply cannot be legally stretched to apply to erotic or sexual relationships between homosexual persons. The word "conjugal" is not that elastic legally, socially or biologically a this bill suggests. *The Shorter Oxford English Dictionary* defines the word "conjugate" and then it defines the word "conjugation." The dictionary defines the word "conjugation" in grammar, botany, mathematics, physics, chemistry and in biology. "Conjugation," in common parlance, is mating, as, for example the term "the mating season." About the meaning of conjugation in biology, *The Shorter Oxford English Dictionary* informs us that "conjugation" is the union or fusion of two cells for reproduction.



Honourable senators, this morning, in the National Finance Committee, we heard an excellent presentation from some of the personnel from Health Canada. They were talking about the reproduction and development of a mutation in viruses, the threat that will be placed before our community, the need for vaccination, and so on. Furthermore, in that particular committee this morning, they made reference to some of the biological aspects of what one calls "genetic mixing." It is important that we understand the meaning. About the meaning of "conjugation" in biology, *The Shorter Oxford English Dictionary* informs us that "conjugation is the union of two cells for reproduction. In biology, "conjugation" means genetic recombination — that is, a recombination of genetic material. "Conjugation" is a mixing of genetic material. Such genetic mixing invariably produces offspring in the human species, called issue or children. This human offspring is similar to both parents in respect of being of the same species, but though of the same species, on an individual basis, it is a unique organism, a unique person.

Honourable senators, the prerequisite condition absolutely necessary to genetic recombination in humans is the existence of two different mating types. There have to be two mating types of the same species, but two different mating types — that is, different from each other biologically in mating capacity and mating function in the biological process of reproduction. Reproduction is not a legal process, it is a biological one.

The two mating types are, first, a genetic donor, typically described as male, man; and, second, a genetic recipient, typically described as female, woman. This is the process of genetic recombination. It is a recombination of genetic materials from both a man and a woman. It follows, then, that biological conjugation, genetic recombination, simply cannot occur in a situation where two mating organisms are of the same mating type, a condition simply described as homosexuality, hence the Greek prefix, *homo* and the word "sexual": homosexual. Homosexual sexual activities cannot be conjugal in the business of mating. The two homosexuals, as the prefix *homo* dictates, belong to the same mating type. Consequently, homosexual, erotic, carnal relationships cannot be conjugal.

Honourable senators, I should like to speak now about clause 1.1 of Bill C-23, which states:

For greater certainty, the amendments made by this Act do not affect the meaning of the word 'marriage', that is, the lawful union of one man and one woman to the exclusion of all others.

This is an amendment made in the House of Commons at the prompting of Minister McLellan herself. It was presented as proof that the minister was concerned about marriage, and to reassure Canadians that bill C-23 will not affect the meaning of the word "marriage". Honourable senators, this amendment will not appear in a single one of the several dozen statutes, 68 in all, that Bill C-23 is amending. These words will not appear in any of those amended statute laws and will simply fall away, if and when Bill C-23 is passed.

Mr. David Brown, a Toronto lawyer with the firm of Stikeman Elliott, has given a legal opinion on the principles of statutory

interpretation in relation to Bill C-23. About clause 1.1, David Brown said:

Put another way, section 1.1 is not an enacting provision of the Bill; it does not operate to amend any of the particular acts referred to in the Bill by including a definition of the word "marriage". Passage of a version of Bill C-23 which includes section 1.1 will not result, as a matter of law, in any of the specific bills containing a definition of "marriage". Section 1.1 is not an enacting provision; it is simply an interpretative section.

Honourable senators, I hope that the committee will give Bill C-23 serious study and offer some improvements. I hope that the committee will attempt to find a balance between the societal interest in marriage and the societal interests in providing benefits for homosexual persons.

• (1630)

Honourable senators, in this chamber on May 2 of last week, in response to my question of Senator Pépin, Senator Joyal stated, as reported at page 1191 of the *Debates of the Senate*:

The Supreme Court judgment in the case referred to by Senator Pépin, and in particular Justice Cory, has defined clearly what is a conjugal relationship.

I would ask the committee to study this question. My reading of the Supreme Court's judgment in the 1999 case of *M. v. H.* informs me differently — and I believe that is the case to which Senator Joyal was referring in response to my question of Senator Pépin. It is true that Mr. Justice Cory did mention the words "conjugal relationships," but the court did not define what is a conjugal relationship; the question was not settled at all. In fact, Mr. Justice Cory mentioned those words in *obiter*.

In *obiter*, Mr. Justice Cory referred to a lower court decision, being the Ontario District Court 1980 case of *Molodowich v. Penttinen*. I note that the *Molodowich* case discussed conjugality in the context of heterosexual relationships. In *M. v. H.*, Mr. Justice Cory stated at paragraph 59:

*Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376 (Ont. Dist. Ct.), sets out the generally accepted characteristics of a conjugal relationship. They include shared shelter, sexual and personal behaviour, services, social activities, economic support and children, as well as the societal perception of the couple. However, it was recognized that these elements may be present in varying degrees and not all are necessary for the relationship to be found to be conjugal. While it is true that there may not be any consensus as to the societal perception of same-sex couples, there is agreement that same-sex couples share many other 'conjugal' characteristics. In order to come within the definition, neither opposite-sex couples nor same-sex couples are required to fit precisely the traditional marital model to demonstrate that the relationship is 'conjugal'.



The case of *Molodowich v. Penttinen* made no mention of same-sex relationships.

I am hopeful that the committee will study this matter. I am sure that many questions will follow.

Honourable senators, I note that the decision in *M. v. H.* by Mr. Justice Cory, supported by Chief Justice Lamer and Justices Claire L'Heureux-Dubé, Beverly McLachlin, Frank Iacobucci and Ian Binnie, was based not on whether homosexual partners lived in a conjugal relationship, but, rather, on the interpretation of the purpose of section 29 of the Ontario Family Law Act. The majority concluded that the purpose of that section was to reduce the demands on the public welfare system.

**The Hon. the Speaker:** I regret to interrupt the Honourable Senator Cools, but her 15-minute speaking time has expired.

**Senator Cools:** May I have leave to finish my speech, honourable senators?

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Cools:** They concluded, therefore, that it was discriminatory to exclude same-sex couples from these provisions since it would purportedly defeat the purposes of the act. In effect, the mention by Mr. Justice Cory that same-sex couples were, in fact, in a conjugal relationship was not essential or relevant to the decision, but rather was included as *obiter dicta* only. I hope the committee will clarify this question as to what Mr. Justice Cory actually said, and its impact on the judicial determination of the meaning of a conjugal relationship.

Honourable senators, for the sake of the record I should like to cite a particular statement from the 1980 decision in *Molodowich v. Penttinen*. The judgment was given by Mr. Justice Kurisko of the Ontario District Court. He stated:

The suit for restitution of conjugal rights was the enforcement of the essence of the marriage contract recognized from time immemorial that there be cohabitation and that conjugal rights be rendered.

Honourable senators, I sincerely believe that it is possible to be fair in our community, and it is truly possible to do justice to all. I may be a little naive, although I do not really think so.

My objection to this particular bill comes down to the particular use of the words "conjugal relationships." I have always believed that law has eschewed enactments based on lust and carnal activity. That has always been my understanding. In point of fact, very little law has supported "sexual relationships" per se. I think that a better way to draw this bill would have been to call on the traditional history of bill drafting and to proceed in a way that was consistent and consonant with our fine traditions.

My last point in closing has to do with the origin of morality, the origin of marriage and the origin of duties to each other. I

would have been much happier if Bill C-23 had ground entitlements and commitments voluntarily given rather than in a conjugal relationship based on sexuality.

I have attempted to look quickly at some of the documents that I have on the origins of morality, which is a very complex and large issue. What we do know is that primitive morality was something that came about in the very beginnings of the moral life of man. As we know, in animals, there is no rudimentary morality but, rather, the material that, in human life, intelligence fashions into morality. The only source of knowledge available of the mind of the primitives is that which was reflected in the relics and folklore of primitive ways of thought. Some of those survived in the folklore and in the superstitious practices of peoples.

What is important to understand is that morality and law all began to build around what one would call the basic needs of human beings. I say to honourable senators that the basic need of human beings, and the basic need that was to be served, was the need to endure and be preserved as a race. Marriage has always been thought to be the most effective, and certainly the most successful, social institution around the question of the bringing forth of issue, children.

It is important that society accords protection to homosexual persons. All of us have read a great deal and studied a great deal about this matter. I have often quoted from the profound writings of Oscar Wilde, in particular his work *De Profundis*, in which he talked about the enormous suffering that he experienced caused by his homosexuality.

I am sure all honourable senators agree that no homosexual person should ever be made to suffer and that we all agree that justice should be done. I would be happier if the minister could have found a way to achieve that end without having to resort to sex or sexual activity as the basis for the law. That is revolutionary and unheard of.

**Hon. Céline Hervieux-Payette:** Honourable senators I should like to ask a question of the honourable senator.

**Senator Cools:** Please do.

• (1640)

**Senator Hervieux-Payette:** In order to clarify the honourable senator's apprehension, would Senator Cools have been happier had the benefit been allocated to people who are in a relation of dependence, whether they are parents, a daughter and a father living in the same family, or two friends, or cousins, or any people who are supporting each other and living in the same residence? Also, would the honourable senator have been happier if the measure were applied in a broader fashion, without going into the bedrooms of the nation; that is, to everyone who is in a relationship of dependence or interdependence?

**Senator Cools:** I thank the honourable senator for her thoughtful remarks.

Honourable senators, a couple of things spring to mind. It would be fair to say that all honourable senators would support the extensions of benefits to all situations of family members in economically dependent circumstances. I am sure that there are many senators here who have aging parents or disabled relatives to care for. One senator has indicated that she has a disabled son. I am convinced, however, that the agreement would be unanimous because we can all look around the community and see endless examples of people who are faltering under the burden of supporting others. I shall give an example. In our dining room upstairs, there is a particular waitress who has raised her grandchildren. There are endless relationships like that.

Honourable senators, I had hoped that that would be the route taken by the minister because it is by far one of the easiest routes of interest, and that is why I put that quotation on the record. The minister told the Standing Senate Committee on Legal and Constitutional Affairs that she would proceed in that way and that she would be looking at all familial relationships of dependency. Therefore, I intend to ask the minister, at some point, how and why she retreated. Yes, I think there are large numbers of people in our community who are simply burdened, out of duty to family members who are in need of assistance.

On the second point raised by the honourable senator, which is a more difficult question, in 1968 homosexuality was decriminalized. I believe that one of the expressions at the time, which was coined by our own former leader, Mr. Trudeau, was to the effect that the state should stay out of the bedrooms of the nation. Honourable senators, this bill will do the opposite. This bill is putting the state into the bedrooms of the nation because this bill does not indicate how the existence of a conjugal relationship will be determined.

For example, if two persons are married, the marriage certificate is the proof that a commitment to support each other exists. One must be mindful, even when the years of sexual activity have faded, of the commitment voluntarily made and accepted. This bill does not speak to that. Someone else will need to make a determination as to whether or not a conjugal relationship exists. I would submit to the honourable senator, therefore, that I do not know quite how it will be done. Perhaps there will be conjugal relationship police, I do not know.

I submit that that question should be reviewed in a careful way by the committee. I see Senator Nolin looking at me from across the way. I am sure that Senator Nolin, as a lawyer in many large insurance settlement cases, or in succession cases in wills and estates, knows that one always asks for the death certificate and the marriage certificate or certificate of divorce.

Honourable senators, we are dealing here with a bit of an oddity. That is part of my disappointment, that the minister simply never read the record on what I had to say on this issue. The minister could have found a way to achieve her policy objective, which was the question that Senator Kinsella asked, without moving to the reliance on sex. I know of no other legislation that looks to sex, or that employs those kinds of terms.

Even all the jurisprudence around marriage speaks in very different terms. Therefore, it is very troubling.

Honourable senators, I do not want anyone to think that I am a little old lady who is easily shocked. However, it seems to me that the best way to write legislation is to, first, be consistent with past legislation, in as tidy a way as possible, and with as little offence to people as possible. My understanding has been that the law has always eschewed lust.

[Translation]

**Hon. Serge Joyal:** Honourable senators, it is with great pride that I take part in the debate on Bill C-23, to modernize the Statutes of Canada in relation to benefits and obligations.

[English]

This bill will provide same-sex couples the same benefits and obligations as those already given to couples of the opposite sex who live in common-law unions. In fact, it emanates from the judgment of the Supreme Court of Canada in *M. v. H.*, rendered on March 18, 1998. That judgment essentially dealt with the interpretation of section 15.1 of the Canadian Charter of Rights and Freedoms, which is entitled "Equality Rights." Under this section the court held that discrimination based on sexual orientation is a direct infringement of the equality rights guaranteed by the Charter. Bill C-23 is, first and foremost, a bill addressed to the right to equality and the freedom of choice that this entails. More simply put, the court has ruled that discrimination based on sexual orientation is just as reprehensible as discrimination based on race, ethnic origin, or colour.

Honourable senators, what are we talking about when we refer to discrimination based on sexual orientation? In my opinion, we are talking about one of the most serious grounds of discrimination that is still present in our so-called free and democratic society. Let us recall certain things that a number of us remember, events that occurred not so long ago.

The policy of ethnic cleansing in the Third Reich was aimed at three groups in particular: the Jews, the Gypsies, and the homosexuals. It is sometimes forgotten, but, in the Nazi extermination camps, tens of thousands of gays were also sent to the gas chambers. According to some Holocaust historians and, in particular, Rudiger Lautman, gay prisoners were, more than any others, subjected to the most male chauvinistic brutality. They were required to wear the infamous "pink" fabric triangle on their chest, and the figure 175 on the back of their uniform, in order to consistently draw their jailers' and executioners' attention to their identity.

They were subjected to the most inhumane medical experiments, not to mention operations on their brains, and the amputation of their genitals to rid them of their "degenerate" condition. After the war they were refused status as victims of Nazi persecution and denied any compensation. Some were even required to remain in prison to serve the sentences imposed by Nazi justice.



Honourable senators, the persecution of homosexuals did not stop at the end of the war. It suffered just as tragically in the dark years of McCarthyism, particularly in the United States, and it also had some tragic sequels in Canada, even within the highest levels of the Canadian government.

• (1650)

The suicide of the diplomat Herbert Norman, a leading colleague of Lester B. Pearson and Canada's ambassador to Egypt, in 1957 is the most notorious illustration. At the time, his suicide was perceived as the only way to escape public shame and professional disqualification.

How many senior officials, high-ranking officers and public men have seen their reputations destroyed by the allegation "Yes, but he is a homosexual"? How many careers in the 1950s and 1960s were ended or dead-ended because to be gay was a synonym for potential blackmail, character weakness and deviation inconsistent with senior responsibilities?

Today, of course, it must be acknowledged that one can be the mayor of a major Canadian city, a judge, an MP, a senator, a minister, an ambassador and be gay, but has the discrimination really disappeared? Unfortunately, the social and political pressure still remains extremely strong.

According to professional social studies research conducted at Laval University and published last April 27, 71 per cent of young gay males between the ages of 15 and 24 have considered suicide and 36 per cent of them have previously attempted suicide.

The social pressure of the community and the stigma still associated with being gay are stronger and more devastating than any other ground of discrimination outlawed by the Canadian Charter of Rights and Freedoms.

Why, in fact, do we have a charter? Is it to reflect the views of the majority or, instead, to reflect minorities who view suicide as simply the ultimate way in which to escape opprobrium, vindictiveness and humiliating marginalization?

In recent years, the Senate has taken some initiatives to have sexual orientation as a prohibited ground of discrimination under the Canadian Human Rights Act. In 1992, Bill S-15, presented by Senator Kinsella, revived as Bill S-2 in 1996 and finally Bill S-5 in 1997, recognizing affirmative action programs for victims of discrimination, indicated the interest our house has expressed in regard to this serious situation. However, the real meaning of the Supreme Court of Canada's 1998 judgment in *M. v. H.* is still to be debated.

Honourable senators, in my opinion, our role is to examine Bill C-23 in the broader context of the interpretation that the Supreme Court has given to protection against discrimination based on sexual orientation.

[Translation]

Just what did the Supreme Court do?

By ruling that unequal access to benefits and obligations for same-sex couples was contrary to the equality rights under section 15.1 of the Charter, the Supreme Court formally recognized sexual orientation as a prohibited ground of discrimination. In other words, the court recognized the equal rights of both types of couples. This ruling has a legal impact on all the other situations or conditions where exclusion is based on sexual orientation.

In 1981, the joint committee that I chaired at the time with the late Senator Harry Hays considered adding sexual orientation to the list of prohibited grounds of discrimination under section 15.1 of the Charter.

I was in favour of such a measure. However, at the time, legal counsel for the Minister of Justice convinced us that it was better to rely on the opening clause of section 15.1, whose general scope would allow the courts to echo evolution within Canadian society over the years.

Indeed, the list of grounds of discrimination in section 15.1 is not a comprehensive one. Rather, it is illustrative of the type of discrimination that equality rights seek to eliminate. The inclusion of the words "in particular" confirms this interpretation and defines the latitude the courts have in determining the grounds of discrimination to be prohibited.

What the Supreme Court recognized is the principle of equality among individuals, regardless of their sexuality. In other words, sexual orientation is no longer an acceptable ground to exclude someone from a benefit under the law. It is now prohibited to discriminate against a person or a couple and to exclude these people from benefits and obligations to which other people have access, strictly on the basis of their sexual orientation.

The principle of equality of people before the law, regardless of their sexuality, becomes the norm in a free and democratic society like Canada.

Therefore, anything that is directly or indirectly under the authority of the Canadian state can no longer be denied to gay and lesbians on the basis of their sexual orientation.

The rights, benefits and obligations sanctioned by the government must therefore be available to them under the same conditions and in the same way that they are to other individuals, citizens or couples, regardless of their sexuality.

Equality, the founding principle of the rule of law, is the foundation of our society, where all individuals are equal before the law. One cannot discriminate on the basis of colour, race or ethnic origin. And, since *M. v. H.*, one can no longer discriminate on the basis of sexual orientation.

This new standard in our law and in our institutions will lead to important, not to say fundamental, adjustments and change the full implications of which are still not known to us.

[ Senator Joyal ]



In fact, this issue is probably the most difficult one that Canadian lawmakers have had to tackle since, for a great many people, it is already the subject of moral precepts dictated by their particular religious affiliation.

However, it is our responsibility as lawmakers to take up the challenge of identifying all the situations in which the government is still awarding rights and benefits on the basis of people's sexuality.

Now that the Supreme Court has ruled against discrimination on the grounds of sexual orientation, political will does not have to wait for consensus in order to restore to individuals their fundamental right to equality.

The government has a fundamental responsibility to take all required action to ensure that the Charter provisions are fully complied with and that all its laws and decisions faithfully reflect them.

Naturally, we cannot ignore the difficulties, the passions to which such an undertaking can give rise, but we must remember the ethical neutrality of public legal order and our responsibility to protect minorities, especially those that are the most fragile, those that are the easiest to exclude and marginalize and, let us be honest, ridicule.

Some people experience a feeling of personal moral discomfort in setting aside the teachings and dictates of their religion and agreeing to enter into an intellectual process that consists in adjusting public laws and institutions so as to fully recognize the equality in law of gays and lesbians and their equal entitlement to the benefit of the law.

However, the government cannot pass judgement on the morals or religious precepts the population chooses for itself. It must allow all morals to coexist without imposing the requirements of one or the other, especially if one of the morals is dominant and imposed on the smaller number, which has chosen a different approach and constitutes the minority most oppressed under the weight of the culture of the majority moral.

This is the most difficult question we have to resolve as objective legislators. We must set aside our own choices and rules in order to return those discriminated against to the full enjoyment of their rights as free and equal citizens.

• (1700)

This is why Bill C-23, which rightly is essential in order to return the full measure of their rights to people who have been discriminated against, appears to me to contain a legal

inconsistency, or a "contradiction juridique" in French, by establishing that same-sex couples living in a common-law relationship have the same benefits and obligations as opposite-sex couples living in a similar situation, but reaffirming in clause 1 of the bill the exclusion of these same couples from the benefits and obligations of marriage.

In all logic, legal recognition of same-sex couples and their free access to the rights and obligation of opposite-sex common-law couples goes beyond the mere demand for subjective rights of a specific group. It is the logical conclusion of a process of indifferentiation of the matter, without which any egalitarian initiative remains incompletely fulfilled.

In this context, marriage must be defined as an institution that is civil in nature, contractual, and between two individuals on an egalitarian basis, one that must be accessible to all regardless of race, colour, religion or sexual orientation.

When the Canadian Parliament has to address this matter, would we be doing something innovative? Would we be going against some sort of natural or anthropological law?

Honourable senators, countries or states with comparable legal systems have already legislated a satisfactory legal system. To mention but one, the State of Vermont, which could hardly be closer to our country, passed legislation on April 25, less than two weeks ago, recognizing the benefits and obligations of Civil Union, the institutional equivalent of traditional marriage, for same-sex couples. Last year, the parliament of France adopted the PACS, which stands for *Pacte Civil de Solidarité et de Concubinage*, and recognizes for couples of the same sex the benefits of public sanction of the commitment made by two persons to be linked under civil law and to share the obligations of cohabitation and a shared life. Denmark, the Netherlands, Norway and Sweden have also created a civil system which provides public recognition to the commitment by same-sex couples to one another, and their mutual obligations, in deciding to share their lives.

The societies of France, Denmark, Sweden, Holland and the State of Vermont in the U.S.A. have resolved the legal challenge represented by acknowledgement of full equality and full access to state recognition of the obligation freely assumed by two individuals toward each other to share the responsibilities of a common-law union.

However, any policy of recognition must be preceded by a period of tolerance, with all the distant condescension that such a concept can imply. Still, Canadian public opinion is probably above such uneasy reluctance.

Bill C-23 is an essential step toward the legal recognition of civil equality for same-sex couples whose members wish to make a public commitment to one another. It is a benchmark that reflects the fundamental principles underlying the role of the state regarding civil unions, which is to recognize equal access for all to the benefits provided by the law and by our institutions.

In this endeavour to express, in our laws, the plurality and the complexity of new families, we cannot elude our responsibility to ensure the legal recognition by the government of the equal partnership of two people in a recognized contractual relationship.

That is the essential guarantee that may put an end to public condemnation and provide hope, through a single legal provision, in a society characterized by its diversity, whether political, religious, ethnic or sexual.

The various sexualities are now part of our social pluralism just like race, colour or religious opinions do. Any violation or discrimination based on sexual orientation must be fought with the same legislative rigour as racism, xenophobia or sexism.

From now on, any attack on the pluralism of sexualities must be perceived as a threat to the democratic values of our country. Ensuring the conditions that will give hope in life is our ultimate responsibility to future generations.

These are, honourable senators, the personal thoughts that must guide us during the debate on Bill C-23.

**Hon. Lowell Murray:** Honourable senators, if I understood him correctly, Senator Joyal is opposed, at least implicitly, to the clause included by the Minister of Justice late in the debate in the other place, to reassure people that the bill does not in any way affect the definition of marriage.

[English]

**Senator Joyal:** I thank the honourable senator for his question because it helps me to give precision to an aspect of my speech. I believe there is a legal inconsistency. To give social, political, and legal recognition to one type of union and impose conditions on another, fundamentally puts in question the principle of equality. Either these unions are equal or they are not. If some types of common law unions are recognized, why does the same principle not apply to other types?

The Divisional Court of Ontario dealt with that issue in *Leyland and Beaulne v. Attorney General of Canada*, in 1992. Three judges decided on the very issue of the definition of marriage. Two judges maintained the traditional definition, while the opinion of Judge Greer was contrary. I believe that, if the case of *M. v. H.* were adjudicated in the Supreme Court of Canada today, the opinion of Judge Greer would prevail. That is the interpretation I gave to the judgment in *M. v. H.*

Thus, what the minister added in clause 1.1 of the bill is the interpretation of marriage in common law in Canada rather than coming under legislation of the Parliament of Canada. There is

no definition of marriage in Canadian legislation. The only legislation that we have pertaining to marriage is legislation prohibiting marriage on certain grounds, but there is no definition of marriage. The definition of marriage is essentially a common law definition. In clause 1.1 of this bill we introduce, in a legal text, the definition of marriage as it has been interpreted in the common law. However, I believe that since the judgment of the Supreme Court of Canada in *M. v. H.* in 1988, that definition is no longer accurate.

Allow me to state clearly that I will not vote against this bill. I intend to support it as is because it is a very important step toward establishing clearly the principle of equality as the Supreme Court has interpreted section 15.1 of our Charter. However, it leaves open the question on the civil definition of marriage. I insist on "civil definition of marriage" rather than "religious definition of marriage." To me there is a fundamental distinction. When the state defines marriage in the year 2000, it is to provide access to the benefits of the law and the benefits of public institutions on an equal basis.

**The Hon. the Speaker:** Honourable senators, unfortunately the speech and the question have exceeded the 15-minute time period allowed. Is it your desire to grant leave to extend?

**Hon. Senators:** Agreed.

**Senator Murray:** Would the honourable senator like to speculate on whether the clause to which I have referred confirming, if that is what it does, a certain definition of marriage, will itself end up under examination by the courts?

• (1710)

**Senator Joyal:** Honourable senators, I do not want to predict what will happen in the Canadian courts, but sooner or later, now that we have the judgment in *M. v. H.*, someone, somewhere, will bring that issue back before the court. However, as I stated in my answer to Senator Murray, I think that we can vote on the bill as it is now, even though some of us might share the opinion that I have expressed today — that is, that the bill, by redefining marriage according to common law, will fundamentally answer the question of how far equality can be interpreted. Where does equality stop?

As I say, the decision in *M. v. H.* is based essentially on section 15(1) of the Charter. If we are interpreting a section of the Charter in a way that would differentiate a situation, in a parallel way we would be excluding racial discrimination by accepting it in some situations. For instance, in the United States until 1967, 16 states prohibited marriage between white and coloured people. That ground of discrimination would be prohibited in our legislation.

On the definition of marriage, according to the interpretation of other sections of the Charter and based on the principles of equality and non-discrimination, the understanding of what the situation is today fundamentally leaves the question open. Given the difficulty of the question, and I am the first one to recognize it, the attention of the Supreme Court certainly will be brought to the situation again.



**Hon. Landon Pearson:** Perhaps Senator Joyal will permit a small correction, for the record. I have great respect for Senator Joyal, and I am sure he would not like to have an incorrect statement remain on the record. I am totally in accord with what he said about the question of the discrimination against members of the Department of External Affairs, with many tragic results, and I know about those. However, I am afraid he chose the wrong example. The suicide of Herbert Norman was not the result of that kind of discrimination. It was the result of attacks by the United States House Committee on Un-American Activities. His suicide was a result of the fact that he was a presumed or possible sympathizer to communism rather than other things in his background, as his widow would attest.

**Senator Joyal:** Honourable senators, I appreciate the precision given by the Honourable Senator Pearson. It was common knowledge in those days, as she knows, that the security checks in the diplomat ranks of Canada were as strict as the ones in the United States at that time. They encompassed the same consequences. Some people were informed that a security check had reached certain conclusions that, if disclosed in public, would bring shame on them, so they were given the opportunity to resign, to be promoted, demoted, or to practise their profession elsewhere. I am pretty sure that Senator Pearson will know of cases where that happened, too. In the case of Herbert Norman, I have read the memoir of the late Right Honourable Lester B. Pearson and the book just published by John English about the Pearson years. I would say that a doubt remained. His reputation was attacked, and even when Herbert Norman put an end to his life, the whisperers tried to find something else. Those innuendoes were made about him.

**Senator Pearson:** Honourable senators, I knew Herbert Norman. I am a friend of his wife. I feel very strongly that it was other issues that were questionable in his background from a security check point of view and that he was a man whose life and suicide was a tremendous tragedy for all of us.

**Hon. Peter A. Stollery:** Honourable senators, I have no quarrel with the thrust of the argument of Senator Joyal's speech, but I also wanted to endorse what Senator Pearson has said. I lived in Africa two years after the death of Mr. Norman, and I have friends who are very close to the family of the former ambassador. As to the reasons for his suicide when he jumped off the roof of the embassy in Cairo in 1957, in the first writing that I ever did on Africa, he was the subject of my story. I also think it would be unfortunate to leave what I believe to be the wrong impression for the reasons of the death of Mr. Norman. I think those reasons had to do with security questions going back to his student days in the 1930s. I know people today from that generation who are still alive. That was what was said at the time, and I have heard nothing to change that opinion.

**Senator Cools:** Honourable senators, I have one question. If I may, while I am on my feet, when I was answering Senator Hervieux-Payette's questions, I think I said that Mr. Trudeau was the minister of justice. On reflection, Mr. Turner was the minister of justice at the time and

Mr. Trudeau was the prime minister, so perhaps the record could be corrected in that regard.

The current Minister of Justice in the other place has said repeatedly that Bill C-23 will not diminish marriage and will not impair marriage. The Minister of Justice in the other place has said repeatedly that the Government of Canada is committed to the maintenance and the sustenance of marriage. I am not too sure if I hear a difference of opinion, but we can sort all of that out in committee.

I understood Senator Joyal to say — and I may be wrong, so I can stand corrected — that marriage should be simply a civil union, simply a civil contract.

**Senator Joyal:** Honourable senators, I said that marriage is a contractual link recognized publicly by the state between two persons on an equal basis to face the obligations of life and to share the obligations of life. That is what marriage means to me in terms of a civil definition. That, of course, has nothing to do with the religious definition that a church or a moral code could give of marriage. However, insofar as the public sanction of marriage is concerned, to me, that is what it should be.

Having said that, I should like to associate myself with the great reputation of Herbert Norman and the fact that he was seen at the time as the leading Canadian diplomat amongst a group of highly praised civil servants in Canada who established a tradition of External Affairs diplomacy that we have proudly inherited from the leadership of the late Lester B. Pearson. The last thing in the world I would want to do is impugn his reputation. I reassure Senator Pearson and Senator Stollery that my objective is quite the opposite.

• (1720)

**Senator Cools:** Honourable senators, in respect of marriage being a civil contract, my understanding, and I believe I am supported by the weight of jurisprudence, is that marriage is not a civil contract, even though it bears some contract elements, because most civil contracts can be ended, just as they can be entered into, by voluntary agreement on both sides. Senator Joyal is not suggesting, I hope, that a marriage should be able to be ended merely by simple agreement of the two parties.

**Senator Joyal:** Honourable senators, that is why we have divorce on the basis of mutual consent. This is today the condition of divorce. One can divorce for all kinds of reasons, but, fundamentally, today divorce is granted on the basis of mutual consent.

If two persons decide they want to put an end to their marriage, they go to the court and fill out a form. There is a time frame for them to try to reconcile, and after the lapsing of that period, if nothing new has happened, that is end of the union.

That is a different context to what the situation was 30 years ago when, especially in the province of Quebec, marriage was indissoluble. It is no longer indissoluble. It can be put to an end by mutual consent. That clearly shows the contractual nature of marriage.



**Senator Cools:** My understanding, honourable senators, is that no marriage can be put to an end by mutual consent; that it takes a proclamation and a decree.

**The Hon. the Speaker:** If no other honourable senator wishes to speak, it was moved by the Honourable Senator Pépin, seconded by the Honourable Senator Maheu, that this bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Agreed.

**An Hon. Senator:** On division.

Motion agreed to and bill read second time, on division.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Pépin, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

## CANADA ELECTIONS BILL

THIRD READING—MOTION IN AMENDMENT—VOTE DEFERRED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts:

And on the motion in amendment of the Honourable Senator Oliver, seconded by the Honourable Senator Murray, P.C., that the Bill be not now read a third time but that it be amended, in Clause 350, on page 144, by replacing line 6 with the following:

“(2) Not more than \$4,000 of the total”.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, this item was adjourned by Senator Atkins after the debate had commenced on the motion in amendment by Senator Oliver. I note that Senator Atkins is at a meeting with a number of other honourable senators on another matter. I canvassed his views on this matter, and not wanting to delay in any way the normal passage of this bill through the house, we feel that the argumentation advanced by my colleague Senator Oliver has placed our concern clearly on the record. We are confident that this amendment will receive the support of all senators.

**The Hon. the Speaker:** If no other honourable senator wishes to speak, is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motion in amendment please say “yea”?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion in amendment please say “nay”?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the “nays” have it.

*And two honourable senators having risen.*

**The Hon. the Speaker:** Please call in the senators.

**Hon. Mabel M. DeWare:** Honourable senators, I have spoken to the government whip on the other side, and he has agreed to a deferred vote tomorrow at 3:30 p.m. pursuant to rule 65(3).

**Hon. Dan Hays (Deputy Leader of the Government):** That is correct, honourable senators.

**The Hon. the Speaker:** Is it agreed, honourable senators, that the bells shall ring at 3:15, with the deferred vote to be held at 3:30?

**Hon. Senators:** Agreed.

## PAYMENTS IN LIEU OF TAXES BILL

THIRD READING

**Hon. Wilfred P. Moore** moved the third reading of Bill C-10 to amend the Municipal Grants Act.

He said: Honourable senators, I rise to address you on the third and final reading of Bill C-10, the Payments in Lieu of Taxes Bill.

I should like to begin by thanking honourable senators for supporting this proposed legislation at second reading. Clearly we all recognize the merits of the municipal payments program and its importance to municipalities across Canada. Many of them hail from communities that have benefited from the federal government's historic practice of paying grants in lieu of taxes on its real property holdings. We can well imagine what would happen should this practice end based on the government's constitutional exemption from paying local taxes. The financial impact on communities would be significant and in some cases enormous. There is no doubt that municipal grants would be cut and services would be downgraded and jobs would be lost.

Honourable senators, this legislation is intended to strengthen the payment system now in place, not to reduce its costs. Bill C-10 maintains the principles of fairness and equity that have guided this program since its inception and improves the predictability of payments, which will lend stability to the municipalities in their budgetary processes.

In 1995, the government established a joint technical committee to consider options for modernizing the municipal grants program. The committee included representatives from the Federation of Canadian Municipalities, the Treasury Board Secretariat, and Public Works and Government Services Canada. It produced two reports, in 1995 and 1997.

I believe the joint technical committee should be recognized for its important contribution to the review and reform of this program. Credit is also due to the current Minister of Public Works and Government Services. After carefully considering the work that has gone on over the past few years, the minister made a personal commitment 18 months ago to modernize the program based on national consultations with a broad range of stakeholders. Working with the Federation of Canadian Municipalities, the minister undertook an 11-city consultation tour in the summer of 1998 to learn firsthand how the program could be improved.

When speaking about that tour, honourable senators, we must acknowledge the municipal officials, appraisal professionals and other stakeholders who took the time to engage the minister in a constructive and positive dialogue. These meetings have contributed to a new level of respect and understanding between the two levels of government and no doubt strengthened national unity at an important time in our history.

Honourable senators, a number of organizations have contributed to and endorsed this legislation, including the Federation of Canadian Municipalities and the Appraisal Institute of Canada. What all this should tell us is that this is a solid piece of legislation that will make important and needed improvements to a program that has served this country well for 50 years. Bill C-10 sends a clear message that the federal government respects the standards set for other property owners. It sets out a framework for balancing the overall interests of Canadian taxpayers with the needs of local communities, and it ensures that the federal presence will continue to be a positive factor in communities from coast to coast to coast in the new millennium.

• (1730)

With that in mind, honourable senators, I ask to you join me again in supporting Bill C-10 so that it can be proclaimed and implemented at the earliest possible opportunity.

**The Hon. the Speaker:** If no other honourable senator wishes to speak, I will proceed with the motion.

It was moved by the Honourable Senator Moore, seconded by the Honourable Senator Wiebe, that the bill be read the third time

now. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

## SPECIAL SENATE COMMITTEE ON BILL C-20

MOTION TO APPOINT—SPEAKER'S RULING—  
DEBATE ADJOURNED

On the Order:

Motion of the Honourable Senator Hays, seconded by the Honourable Senator Robichaud, P.C. (*L'Acadie-Acadia*):

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference;

That, notwithstanding Rule 85 (1)(b), the committee be comprised of fifteen members, including:

Senator Joan Fraser  
Senator Céline Hervieux-Payette, P.C.  
Senator Colin Kenny  
Senator Marie P. Poulin (Charette)  
Senator George Furey  
Senator Richard Kroft  
Senator Thelma Chalifoux  
Senator Lorna Milne  
Senator Aurélien Gill;

That four members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee.—(*Speaker's Ruling*).

**The Hon. the Speaker:** Honourable senators, I am prepared to give my ruling now on the matter that was raised in this regard.



Last Thursday, May 4, Senator Lynch-Staunton rose on a point of order when the motion to create a special committee to study Bill C-20, the Clarity Bill, was moved by Senator Hays. The senator had provided notice of the motion in properly drafted form earlier the same week, on Tuesday. In the view of the Leader of the Opposition, the motion is out of order for several reasons. Senator Lynch-Staunton argued that the motion anticipates a decision of the Senate with respect to Bill C-20 and, accordingly, it is not in order to debate the motion prior to the second reading of the bill. To support his position, he cited several procedural authorities, including Erskine May, Beauchesne's and the recently published *House of Commons Procedure and Practice* with respect to the rule of anticipation.

[Translation]

During the course of the discussion on the point of order, Senator Kinsella spoke in support of the position taken by the Leader of the Opposition. In his assessment, there is a problem with appointing a special committee when the *Rules of the Senate* provide for a standing committee whose mandate, he contended, includes such matters as those proposed in Bill C-20. A similar argument was made by Senator Cools who also suggested that there were some errors in the drafting of the motion. Senator Murray also intervened to question how the motion of Senator Hays could be in order, especially in view of the ruling of Tuesday, May 2, 2000 on the motions of instruction.

[English]

At the conclusion of discussion last Thursday, the Speaker *pro tempore* agreed to take the matter under advisement. Since that time, the Speaker *pro tempore* and I have had an opportunity to review the matter in some detail. We have studied the various points that were raised during the discussion and have reviewed the parliamentary authorities that were cited. Based on that examination, I am now prepared to rule on the procedural acceptability of the motion proposed by the Deputy Leader of the Government to create a special committee to study Bill C-20 after second reading.

As I began my assessment of the point of order, it seemed to me that there was an interrelationship with respect to some of the arguments that were raised against the motion. Nonetheless, I will try to deal with each of them separately.

[Translation]

The first point that was made by the Leader of the Opposition has to do with the objection that the motion to create the special committee anticipates an affirmative decision on the second reading motion on Bill C-20. While there is some sense to this position, I do not think that it violates customary parliamentary practice. Nor does it conflict with the *Rules of the Senate* as I understand them. It is true that the motion can be said to anticipate a favourable outcome with respect to the vote on second reading of Bill C-20, but it does not have any determinative effect on the outcome of the second reading vote. The two motions are separate and distinct questions from a procedural point of view. Even if the motion to create the committee is adopted before the second reading of Bill C-20, it does not preclude the possibility that the Senate might vote against second reading of the bill. If this were to happen, the

motion creating the committee would simply become a nullity, as was explained by the Deputy Leader of the Government.

[English]

Senator Lynch-Staunton then noted that committees are limited and bound by their orders of reference. The consequence of that principle with respect to this particular case, in his view, is that it would not be proper to consider the motion creating the special committee until after second reading. Only then would it be certain that the Senate had approved the principle of Bill C-20, thus establishing the parameters of the order of reference. There is, however, a difficulty with respect to that assessment; one that also touches the intervention of Senator Murray, who appeared to find a resemblance between a motion to create a special committee and a motion of instruction, at least to the extent that neither can be moved prior to the second reading of the bill to which it pertains.

As everyone who spoke on this point last Thursday seemed to acknowledge, a motion to create a special committee is debatable. In fact, that is based on rule 62(1)(h), which explains that a motion for the appointment of a standing or special committee is debatable. Senator Hays went further to point out that, under the terms of rule 93, the Senate "may appoint such special committees as it deems advisable and may set the terms of reference and indicate the powers to be exercised and the duties to be undertaken by any such committee."

However, the motion to refer a bill to one committee or another following second reading is neither debatable nor amendable according to rules 62(1)(i) and 62(2). That is because a motion of reference to a committee is what might be classed as a procedural motion. It follows automatically as a consequence of the adoption of the second reading motion of the bill.

The only opportunity, therefore, for a bill to be referred to special committee or a legislative committee, which is also permitted under our rules, is to create that committee by separate, debatable motion. Moreover, as I have attempted to explain, that motion must be adopted prior to the decision on second reading of the relevant bill. Otherwise, under our current rules, it would not be possible to send the bill to that committee because it does not exist. My understanding of this procedure seems to be confirmed by several precedents.

[Translation]

There have been three occasions in the last twelve years when the Senate decided to establish a special committee to deal with legislation. Two of the cases predate the rule changes of 1999; the third does not. The first occurred in July 1988 and related to Bill C-72, on official languages. The second happened the following year, in November 1989, and related to Bill C-2 dealing with unemployment insurance. Of these two cases, the first motion was adopted after second reading, but the second motion was adopted before second reading. The third and most recent precedent dates to 1995 and involved Bill C-110 on constitutional amendments. Notice of all three motions was given before the motion for second reading of the relevant bill was adopted. In fact, all of them were cast in the same language: the motion relating to the present case. They all proposed to establish a special committee to consider a specific bill "after second reading." As it happened, only the 1995 precedent gave rise to any debate, though all of them were moved as debatable motions.



In addition to these Senate precedents, there is another interesting example that occurred in the other place in March 1993. On that occasion, a motion was moved to establish a special joint committee to consider Bill C-116 dealing with conflict of interests for public office holders. Though the practices of the other place are not identical to our own, like the Senate, there is no opportunity there to debate the question of the committee to which the bill will be referred once second reading debate has concluded. Consequently, the motion creating the special joint committee had to be adopted before the question for second reading was voted.

[English]

Taking a somewhat different approach than that maintained by the Leader of the Opposition, Senator Kinsella argued that the *Rules of the Senate* provide mandates for all of its standing committees, including Legal and Constitutional Affairs. Bill C-20, he maintained, clearly falls within the mandate of that standing committee and, therefore, the bill should be referred to it rather than to any special committee. Whatever the merits of that point of view, it does not take into account another rule of the Senate, rule 86(2), which provides that:

Any bill, message, petition, inquiry, paper or other matter may be referred, as the Senate may decide, to any committee.

• (1740)

This rule allows the Senate to disregard, as it deems appropriate, the mandates of the standing committees. Thus, there would appear to be no obstacle based on the rules for a motion to create a special committee.

[Translation]

Finally, there is the third argument put forward by Senator Lynch-Staunton which resembles in part his point regarding anticipation. As was mentioned last Thursday, the rule of anticipation is not an explicit rule of the Senate or of the other place, though it is a principle of practice. Citation 512(1) and (2) in the sixth edition of Beauchesne's at page 154 notes that the rule of anticipation is dependent on the same principle as the rule on the "same question." The rule of anticipation provides that

...a matter must not be anticipated if it is contained in a more effective form of proceeding than the proceeding by which it is sought to be anticipated.

In a descending scale of possibilities, a bill trumps a motion which, in turn, has priority over amendments. Senator Lynch-Staunton's position was that the bill has priority over the motion to create the special committee and therefore must be given precedence.

[English]

I would be prepared to consider accepting that proposition, if I could be convinced that the two questions are the same, or even substantially similar, but they are not. The motion for the second

reading of Bill C-20 involves a decision on the principle of the bill and whether it warrants further study by the Senate. The motion to create a special committee to examine Bill C-20 does not directly address the principle or content of the bill, but rather seeks to provide an alternative to the possibility of referring the bill to another kind of committee. These two motions are not the same in substance, and the rule of anticipation does not apply to their consideration.

For these reasons, I rule that the motion moved by Senator Hays is in order and debate on it can proceed.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I am pleased that we have had this opportunity to clarify the matter of concern raised by Senator Lynch-Staunton. It is now for me to speak to the motion, which I propose to do at this time.

**Hon. Noël A. Kinsella, (Deputy Leader of the Opposition):** You had better move the motion first.

**Senator Hays:** Honourable senators, I shall move the motion again, although I moved it previously on May 4, which is what triggered Senator Lynch-Staunton's point of order.

Honourable senators, I move:

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference;

That, notwithstanding Rule 85 (1)(b), the committee be comprised of fifteen members, including:

Senator Joan Fraser  
Senator Céline Hervieux-Payette, P.C.  
Senator Colin Kenny  
Senator Marie P. Poulin (Charette)  
Senator George Furey  
Senator Richard Kroft  
Senator Thelma Chalifoux  
Senator Lorna Milne  
Senator Aurélien Gill;

That four members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee.

**The Hon. the Speaker:** Honourable senators, is it your pleasure to adopt the motion?

**Some Hon. Senators:** Agreed.

**Senator Kinsella:** May we have an explanation of the motion, honourable senators?

**Senator Hays:** Honourable senators, this motion provides for a special committee to consider Bill C-20, should it be given second reading by this house. I think a fair question to ask is: Why? Senator Kinsella pointed out in debate on the point of order raised by Senator Lynch-Staunton that we have a standing committee, namely, the Standing Senate Committee on Legal and Constitutional Affairs, that by our rules would be the standing committee to which a bill such as Bill C-20 would be referred. His Honour points out in his ruling that the bill could be sent to any committee that the Senate determined would be appropriate for receipt of the bill.

In this case, we on this side are of the view that a special committee is the appropriate way to proceed. There are several reasons for saying that. One is that the Standing Senate Committee on Legal and Constitutional Affairs is a busy committee. It has before it various pieces of legislation. At this time in the parliamentary calendar, as we anticipate breaking for summer, we expect that it will receive a number of important bills that will be coming to us from the other place in the very near future. It also has to consider the private bills, public bills and Senate bills that it already has on its calendar for deliberation. It is a very busy committee.

The question remains whether there is sufficient reason to create a special committee to give additional flexibility in terms of doing the work of a committee on a bill. Our position on this side is that there is such a reason and that the way to deal with that problem is to create the special committee as set out in the motion.

Another element of importance is that the special committee can be larger than our standing committee, which is a 12-person committee. The motion that I have put for your consideration, honourable senators, proposes a 15-person committee, which gives us a bit more flexibility with two additional senators from the government side and one additional senator from the opposition side, and accords with our practice in regard to a 15-person committee.

Another reason that we on this side believe that a special committee is an appropriate way to proceed is the flexibility that such a committee will have, given that it will have but one bill to deal with. It will be able to arrange sitting times much more easily than a standing committee such as the Standing Senate Committee on Legal and Constitutional Affairs, which has a heavy agenda.

This is an important bill that we envisage going to this committee, should this house give it second reading. It will take quite a bit of time and attention. We believe that a special committee is a very good way to give it that time and attention. It may be that the committee will sit on Mondays and Fridays when

some of our committees sit. Assuming that the bill is given second reading, the committee could even meet in weeks when we might normally expect to have a break. That would be up to the members of the committee.

As honourable senators will note from the motion that I have put, the committee would be entitled to televise its proceedings. Indeed, that is something that I think we on the government side would think about, as I am sure would the opposition senators who might serve on the committee.

One issue that I should comment on is the matter of membership. The motion that I have put identifies a 15-person committee but does not identify members who would serve on behalf of the opposition. This could be dealt with in a number of ways. However, I believe our practice in these circumstances is that the Committee of Selection would meet. It is chaired by the government whip, Senator Mercier. It would determine the balance of membership. In fact, it would probably confirm the membership as I have set it out in the motion put to this house. That committee would then report back to the Senate and hopefully, we would approve the report of the committee. We would then have a committee to which to send Bill C-20, this important bill that has already taken so much of our time at second reading.

Honourable senators, those are my arguments and my explanation on the matter of the motion favouring a special committee to receive Bill C-20.

On motion of Senator Cools, debate adjourned.

• (1750)

## TOBACCO YOUTH PROTECTION BILL

### SECOND READING

**Hon. Colin Kenny** moved the second reading of Bill S-20, to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada.

He said: Honourable senators, from time to time I feel very lucky to be a member of this institution, and today is one of those days. Life has given us an opportunity to help young Canadians with a problem that affects all of Canadian society and, if I can persuade this chamber of the merits of this bill, we will have chance to profoundly affect the lives of children for years to come.

First, I shall describe the problem that the bill seeks to address. Back in 1997, when I first began to look at tobacco statistics, 40,000 deaths were attributable each year to tobacco-related diseases. Just in the past year, Health Canada has announced new statistics that attribute 45,000 deaths each year to tobacco-related diseases — an increase of 5,000. In fact, that figure may well be conservative because Health Canada only counts the figures for smokers. It does not count those who are affected by environmental tobacco smoke. Therefore, the figure may well be significantly above 45,000.



Second, the age at which people start to smoke has gone down significantly. When I first looked at this issue, 80 per cent of smokers in Canada started before they had turned 18. This year, Health Canada announced that 85 per cent of smokers are starting before the age of 16, and it turns out that they are starting at the ages of 10, 11 and 12. That is the time when kids start, when they are preteens. You do not see anyone at the age of 40 going out and saying, "Well, I think I shall try a cigarette now." We are talking about kids, and we are talking about kids who are starting younger and younger. Finally, there is the question of costs. Health Canada points out that we directly spend \$3 billion a year on tobacco-related diseases and \$7 billion indirectly. That is \$10 billion of costs each year that we can attribute to tobacco-related disease.

Young people are the important target group that we must focus on. Bill S-20 is about young people. The bill addresses young people and is intended to serve young people. Focusing on young people is the only way to break the tobacco companies' cycle of deception that is necessary to maintain its markets and profits. For decades, tobacco companies have waged an aggressive campaign to attract customers from all age groups. We hear the arguments of "freedom of choice" or "lifestyle." I believe in freedom of choice. I think that applies to anyone who is an adult, but it does not apply when we are talking about kids who are 10, 11 and 12.

We have an obligation to preteens, to educate them, to protect them, to nurture them, and that is what this bill is about. Bill S-20 is about protecting our kids. It is not a question of freedom of choice. All those I see in this chamber can decide on their own whether or not they want to smoke, and I would not interfere with any of you making up your mind any way you wanted. However, I feel profoundly different when the issue relates to children. Again, that is what Bill S-20 is about.

In Canada, as I have said, there are 45,000 deaths that come each year from tobacco-related diseases; it is the leading cause of preventable deaths in Canada. To put it in context, the second leading cause of preventable death is car accidents, including drunk driving, and that is in the area of 4,000. Therefore, by a factor of 10, tobacco is the most important killer that we can deal with.

Honourable senators, I do not want to mislead you into thinking that tobacco control in Canada has been a disaster. In fact, I believe that there are many good things that the government has done. I think the government should take credit for them and I am prepared to give the government credit for them. First, we have good tobacco legislation. I think that legislation is very useful and productive. Second, I believe that Bill C-42 is effective, in that it will finally put an end to cigarette promotions; we will see those three years from now finally coming to an end. I believe we also have a good proposal coming forward in terms of cigarette warning labels. I am prepared, therefore, to concede that the government has made a significant effort on a broad range of things. However, there is still one major gap left in funding. Currently the federal government allocates \$20 million a year to tobacco control — \$10 million for enforcement and \$10 million for education. That works out to

66 cents per capita. Yet this same government collects \$2.25 billion every year in tobacco taxes — \$2.25 billion versus \$20 million in prevention. That is less than \$1 for every \$1,000 it collects in taxes.

How do we find a solution? Part of the solution can be found in a document entitled, "Best Practices for Comprehensive Tobacco Control Programs," which is dated August 1999. It was published by the Centre for Disease Control in Atlanta, and it resulted from a study of all 50 of the United States. The study focused in particular on California, Massachusetts and Florida, which are states that have comprehensive and successful tobacco control programs that have proven results.

Before I started my travels this winter, I phoned a doctor in Sacramento, whose name is Dileep Bal. Dr. Bal runs the tobacco control program in the State of California. California is the state that has pioneered tobacco control.

Dr. Bal has a sense of humour. I called him up and I said, "How is it going, Dileep? How are you doing?" He said, "Oh, Colin, have I got problems. Things are really going poorly here." I said, "Dileep, how can that be? You have the best tobacco control program in all of North America," and he said, "Well, Colin, you must understand that five years ago the per capita consumption in California was 120 packs a year. This year, the tobacco consumption in California, on a per-capita basis, is 60 packs a year." His budget had been cut in half.

• (1800)

His program is very similar to what we are talking about in this bill. His funding is driven by the number of cigarettes being sold. He was successful in reducing the number of cigarettes, so his budget was reduced accordingly.

California is the unquestioned leader in the United States, but Massachusetts follows quickly behind. Massachusetts levied an extra 25 cents on each packet of cigarettes. In the first three years of their program, cigarette smoking dropped 17 per cent statewide.

When we talk about figures, the level of youth smoking in Canada today is 30 per cent. Almost one in three kids smoke. The level of youth smoking in California today is 11 per cent. Why is it that the kids in California are getting better protection than the kids in Canada? That is what this bill is about.

This bill, honourable senators, is designed to give our children and the children of Canadians the same sort of protection we are seeing in the states to the south of us. There is no reason we cannot do it. There is nothing magic down there. They have a comprehensive plan. They focused on it and are spending serious money to make it happen because their kids are important. They want to stop smoking, they want to stop tobacco, and they want to stop it now.

**The Hon. the Speaker:** Honourable senators, I regret to have to interrupt Senator Kenny, but it is now six o'clock. What is the wish of the Senate?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I propose that we not see the clock. In saying that, as I look through the scroll, we have before us, as a rough estimate, another 60 to 80 minutes of debate.

**The Hon. the Speaker:** Is it your wish, honourable senators, to not see the clock?

**Hon. Senators:** Agreed.

**Senator Kenny:** Thank you, honourable senators. I appreciate the opportunity to carry on with my remarks.

The point I was trying to make is a simple one. If California can have an 11 per cent youth smoking rate, we can have something comparable here. There is no reason why we cannot, if we choose to address the program. We have a model, a template. Any of the physicians in this house will tell you that the Centers for Disease Control in Atlanta is well respected when it comes to public health. They have laid out a template for all of us that gives us a path to follow and a way we can model ourselves so we can hit the same targets.

Honourable senators, I mentioned earlier that we are currently spending 66 cents per capita on our anti-tobacco programs. The Centers for Disease Control in Atlanta calls for us to spend between \$9 and \$24 per capita in Canadian funds, and they are not alone. I have here a list of spending in some of the states, in Canadian funds. Vermont is spending \$22.95 Canadian. Mississippi, for heaven's sake, is spending \$16.54 Canadian; Massachusetts, \$14.54 Canadian; and Hawaii, \$11.81 Canadian. The list goes on.

We are not alone. We are not inventing the wheel. This is not magic. Other jurisdictions are dedicating serious money and are getting results.

Honourable senators, the Centers for Disease Control document — the best practices template to which I referred to — believes strongly in a comprehensive approach toward tobacco control. This is reflected in the bill as well. It deals with community programs, school programs, province-wide programs, national programs, media campaigns, counter-marketing programs, cessation hotlines, evaluation, and guidance for administration. If we were to follow their model, instead of spending the \$3 million that we spent this year on our tobacco control advertising, we would be spending \$90 million. If we wonder why our advertising campaign is not working, first, it uses American advertisements, not advertisements created here in Canada. Anyone who understands Canada knows that we need unique advertisements for the different parts of Canada. We cannot just take an advertisement created in Toronto and try to run a translation of it in Montreal. We all know that does not work.

**Senator Prud'homme:** At least the Liberal organizers know that. You are right.

**Senator Kenny:** Thank you, Senator Prud'homme. It is not just Liberal organizers who know it. People who want to communicate with Canadians know it. We cannot just pick up

something from the Americans, use the English version, translate it into French and go on from there. We need our own programs.

More to the point, we need to spend at a reasonable level. If we are only spending \$3 million and the template calls for \$90 million, it is time for us to re-examine why we are not getting the results we want.

What are the important principles of the bill? First, we must get a reasonable level of spending, moving from the \$20 million we are currently spending up to \$360 million. That works out to \$12 per capita. That is in the bottom quartile of what the CDC recommends. That is not very much money if you think about. Remember Mississippi, up \$6 above that. We can do better than Mississippi. Second, the bill calls for a Canadian template for a comprehensive tobacco control program along the lines of what they have in the Centers for Disease Control in Atlanta.

Third, the bill calls for the establishment of an arm's-length foundation from government. I shall come back to that in a moment.

The bill would establish a levy of three quarters of a cent per cigarette. That works out to 19 cents per pack or \$1.50 per carton. That would give us \$360 million per year, \$12 per capita; again, the bottom quartile of what the CCD recommends.

The bill would establish a levy for industry purposes, and that would provide stable funding. The health community is stuck with erratic funding that peaks up and down from year to year. It cannot plan from one year to the next. It is stuck wondering whether it can keep program A or program B going simply because it has to wait for each budget to come out before it knows whether it will have funding. That louses up all of its planning.

The bill would have a transparent decision-making process. Every decision would be made public when it was made public. We would all know who got the money. We would know when they got the money. The board meetings would be made public.

I challenge anyone in this chamber to tell me — not just with this government, not just with the Department of Health, but in any government — what is going on on a day-to-day basis. It is really tough. It is tough for parliamentarians and it is a lot tougher for the public.

This bill would create a foundation that would be transparent. All of its meetings would be public. All of its decisions would be public and we would all know what is going on. The governance would be independent, allowing health officials to make health decisions. There would be a 5 per cent cap on costs, as we do not want to see any runaway bureaucracy.

• (1810)

Most important, 10 per cent would be set aside for evaluation of all of the projects. Anyone involved in the health community will tell you that the major problem facing health care in Canada is that we do not spend funds to evaluate our projects. If we do not evaluate our projects, we are doomed to repeat the cycle of failure over and over again, year after year.



In California, you start day one with an evaluator, and you submit an evaluation plan. It is 10 per cent of the overall grant. The evaluation has benchmarks all the way through the process to determine whether the program is meeting its target. This bill calls for the same sort of evaluation and disclosure so we will know whether it is effective or not.

Honourable senators, the second major issue that I wanted to address is why the money is important. We have talked about the number of deaths going from 40,000 to 45,000. We have talked about the number of young people who start smoking earlier and earlier, the age dropping from 18 to 16 for 80 per cent of people who smoke. We have talked about the \$9 to \$24 that the Centers for Disease Control in Atlanta spends. That is why it is important that we have the right sort of funding for this bill.

We have talked about the template along the lines of the Centers for Disease Control model. That was a study of 50 states. It is distilled down and available for all of us to see. The current approach is haphazard and infective. There is no concept of the appropriate levels of funding. There is a need for a comprehensive national approach.

Why do we need all of this? We need it because California has proved it works. It is popular. In the long run, it saves money. It saves taxpayers' dollars because they have moved some of the money at the back end that they spend to cure people to the front end to make sure that they never get the disease in the first place. Why are we spending \$3 billion at the back end and \$20 million at the front end, when if we shifted a bit of it to the front end we would save people all of the grief and all of the unhappiness in the middle? It only stands to reason.

Why should the foundation be at arm's length from government? This room is full of experienced politicians who understand the deal that goes on between ministers and deputy ministers in every government the first day a minister is appointed. The minister calls in the deputy. They shake hands. They very quickly cut a deal. The minister says to the deputy, "I will make you look good if you make me look good." We all know that successful departments need that twinning. The political side and the administrative side work in tandem with each other to be successful.

We also know that it is in the nature of departments to puff up good programs and to dampen down the bad ones. That is nothing unique to the Liberals or the Conservatives. It is true of governments everywhere. That is the nature of how governments work.

The issue of tobacco control is such that we are talking about health science. We are talking about something that is not a certainty. No one has a good grip on how the minds of adolescents work. I venture to say that those honourable senators who are parents still have trouble getting your teenagers to hang up their shirt. I know I do. If I have trouble there, I promise you that I have trouble with other issues as kids go through adolescence.

The very nature of the process of tobacco control means that many of the programs are likely to fail. That goes part and parcel with the academic and scientific process. We must accept that. If you travel to California, you will be shown a list of failures as long as your arm, and they are proud of them. They say, "We had to try these to see if they worked, and we discarded the ones that did not work. Then we were able to move on to the ones that did work, and we are going with those." They will show you the list. Our list will be a little different because we are a little different and we have different problems that need addressing. We need to address them in our own way, but we should not be worried or concerned about failure. One of the difficulties is that we cannot have failure if it is in a government department. The very nature of the beast is that the minister must get up and defend whatever goes on in his or her department and say, "I have done the right thing." The very nature of the opposition critic is to get up and say, "You have done a lousy job, and I will show you why." All of a sudden tobacco control becomes a political football.

That does not make any sense. We need to take this research and move it away from the political process — just one step away, but away from the political process. We have seen the government do this recently with the Canadian Institutes of Health Research, the CIHR. For very good reason, the Minister of Health has decided that this body should be at arm's length from government. Every experiment that the scientists carry on will not to work out perfectly, and he does not see any reason why he should stand up every day and defend every experiment that did not work. It does not make sense.

Having a foundation at arm's length from government is fundamental if we want this issue to proceed on a health basis rather than on a political basis. Failures will be readily apparent. The bill requires transparency. It also requires evaluation so people will know where there are failures. This will all be public. There is no problem there.

I must say that in every state where there has been a comprehensive tobacco control program, there has been gross political interference. In California, the issue was passed by Proposition 99. The state legislature started diverting the funds in California, and the American Cancer Society had to sue the state, recover the funds, and have them spent again on kids.

In Massachusetts, the governor started censoring ads. Lord knows why. He is not an expert on the issue. In fact, the ad that was censored was the one that I believe they called the seven dwarves. The CEOs of the major tobacco committees all stood up and said, "I swear to tell the truth, the whole truth and nothing but the truth," and then they sat down and each in turn said that nicotine was not addictive. That was the whole ad, yet it was yanked by the governor. Go figure. That is not part of the health process.

Let's have health professionals designing ads that will affect kids, that are aimed at kids and that will get results from kids. That is the second reason I believe it is important that we have this bill.

I wish to conclude by saying that we have a terrible health problem, but we have reasonably good laws and we have a solution. As honourable senators think about this bill, I want you to remember that the youth smoking rate in California is 11 per cent. In Canada, our youth smoking rate is 30 per cent. As you consider the bill, ask yourselves again why the kids in California are getting better protection than the kids in Canada. We have one major gap in Canada that must be filled, and that is the gap of funding. This bill will provide the funding. It meets that need without taking a nickel of tax money — not a nickel. This is not a tax bill.

Finally, honourable senators, I believe that, after all of these years, we have come to the conclusion that this is the right thing to do and that this is the right time to do it.

[Translation]

**Hon. Pierre-Claude Nolin:** Honourable senators, this is not the first time I have supported Senator Kenny in his undertaking related to tobacco products and young people. It is not my intention to repeat all the points that have been skilfully and elegantly raised by him.

The honourable senators who have taken part in, and followed, the debates of the first session of the 36th Parliament will recall Bill S-13, which was passed unanimously in this House. It is my hope that Bill S-20 will receive the same approval, after painstaking examination in committee, which goes without saying.

Bill S-13 was not passed by the House of Commons. By correcting it, we ensure that Bill S-20 will not suffer the same fate.

• (1820)

For those honourable senators who have the bill before them, or decide to look at it a little later one, I will limit myself to this comment: Bill S-20 amends S-13 in order to ensure that the Speaker in the other place accepts it, not as a measure that is establishing a tax, but rather one that involves a levy.

In committee we will have the time to explain to the members why Bill S-20 is appropriate. There are three reasons why it is acceptable. According to the ruling by the Speaker of the Other Place, the preamble was what was involved. There have been legal rulings to that effect. The preamble sets out clearly why the tobacco industry, which is currently out of public favour, has no credibility to defend, promote, or counteract the way youth smoking is developing, even if it wished to. A number of industry spokespersons testified on this, but they had no credibility whatsoever. This is why it is important for there to be a fund available if such an objective is to be attained.

Bill S-20 improves on Bill S-13. It should be approved by the other place, because clause 3 of the bill establishes that a distinction must be made between the reason for establishing the Foundation — the program of education for youth — and the bill. That may seem similar, but they are two completely different things. Perhaps they were not properly understood by the Speaker of the other place.

[ Senator Kenny ]

Clause 35 of the bill establishes the benefits for the industry. It sets out three reasons that, according to the knowledgeable counsel who examined the matter, would indicate that Bill S-20 should not meet the same fate as Bill S-13. If it receives the approval of this house, when it is under examination in the other place, we have every reason to believe that it will be passed.

Honourable senators, we must send this bill as quickly as possible to committee so we may examine it in depth, as we did the last time with Bill S-13.

For the honourable senators who had followed the debate, it will be a bit of a repeat. We must repeat the exercise responsibly, as we are capable of doing.

**Hon. Marcel Prud'homme:** Honourable senators, I will add my voice to that of Senator Nolin. What I wanted to say today, I will say in committee, as he has just suggested.

**Hon. Sharon Carstairs (The Hon. the Acting Speaker):** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to, and bill read second time.

REFERRED TO COMMITTEE

[English]

**The Hon. the Acting Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Kenny, bill referred to the Standing Senate Committee on Energy, the Environment and Natural Resources.

## SIR JOHN A. MACDONALD DAY BILL

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Grimard, seconded by the Honourable Senator Atkins, for the second reading of Bill S-16, respecting Sir John A. Macdonald Day.—(Honourable Senator Grafstein).

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, Bill S-16, introduced by my colleague Senator Grimard, has captured the attention of a number of honourable senators. It is my understanding that Senator Grafstein and Senator Grimard have been exploring whether they might be able to collapse this bill into another bill.

Until that happens, we have Bill S-16, which has merit on its own and I believe is supportable in and of itself. However, this being the fifteenth day that the item has been on the Order Paper without debate, I look forward to seeing progress that these matters be voted up or down, one way or another, not just left to appear on the Order Paper and not be addressed.



It is my understanding that a fair amount of consultation has taken place on the principle of the bill, and I look forward to hearing further from Senator Grafstein when he speaks to the bill.

On motion of Senator Hays, for Senator Grafstein, debate adjourned.

## A BILL TO CHANGE THE NAMES OF CERTAIN ELECTORAL DISTRICTS

SECOND READING—DEBATE ADJOURNED

**Hon. Bill Rompkey** moved the second reading of Bill C-473, to change the names of certain electoral districts.

He said: Honourable senators, this is a bill like others that have come before us from time to time with regard to the change of name for ridings in the other place. Demographics is usually the reason cited for the change.

Some people have some concerns about this proposed legislation. However, those concerns are best addressed in the committee rather than on the floor of the Senate chamber.

Honourable senators, I propose that we adopt this bill at second reading and move it on to committee.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, it is true that this has already been debated and objections raised. We must put our cards on the table. We must ask the honourable members to stop what I am beginning to think is an abuse of public funds. At first blush, this seems very simple.

For instance, one member represents the riding of Dollard. He thinks it would be a good thing electorally if Kirkland, which is in the riding, were recognized and if the county were now called Dollard—Kirkland. This is just an example, because Kirkland is not in the riding of Dollard.

• (1830)

But what was never said — the chief government whip, Senator Mercier, understands this very well, because we worked on these issues together — is that nobody seems to be paying attention to the enormous costs that this represents for Elections Canada every time we change the name of a riding. I recently learned that this may lead to logistical problems. As for the memory of computers, among other things, it becomes an impossibility or else the price will have to be paid.

I was the member for Montréal—Saint-Denis, which was represented by Azellus Denis, who was a member of Parliament for 29 years and a senator for 28. By the way, Mr. Denis holds the record as the only member of Parliament since 1867 to sit for more than 54 years. This is something we should at least point out, even if I did not always agree with him. There has always been pressure to change the riding of Saint-Denis.

I represented a new neighbourhood which, during the Trudeau years, was part of the riding of Mount Royal. That neighbourhood was called Parc-Extension. Politically speaking, it would have been a good thing for me to say that it was the riding of Saint-Denis—Parc-Extension, but I would have had to add the riding of Papineau. Then it would not have been possible to forget Rosemont, where I live. It is as if, for example, the member currently representing Mount Royal now wanted his riding to be called Mount Royal—Côte-des-Neiges. This would create political headaches in Hampstead and Côte-Saint-Luc. It would become the riding of Mount Royal—Côte-Saint-Luc—Hampstead—Côte-des-Neiges. I have nothing against that, but no one ever told us how much each of these changes costs.

When this bill is sent to the appropriate parliamentary committee, a senator should raise the issue of costs. Otherwise, it is simply a matter of approving a straightforward piece of legislation.

Honourable senators will remember that I was one of those — and I never apologized for it — who were accused of letting the act follow its course when we talked about amending the Canada Elections Act and freezing the electoral reform and redistribution system.

Thanks to a simple action by the Senate, the government saved between five and seven million dollars. It is true that the government was not happy with my decision, but I do not have to apologize for making the government save such an amount of money because of my stubbornness, as I was told at the time, right here in the Senate. No one remembers that we said no to the whim of members of Parliament by refusing to amend the elections act. Everyone was re-elected. Everyone was happy. His name was Joe, he was Canadian and he was very happy. However, that is another issue.

Senator Rompkey is proposing, without naming them, a list of very long names. This means that when the chief electoral officer receives Parliament's decision, it will be all over. He will have no choice but to amend the electoral map. I always raise the same objections. At some point, I will not only have objections, I will also try to convince senators that I am right, that no changes should be made to the names of ridings between elections. Parliament should have the wisdom to do that. When a redistribution takes place, it should remain in effect until the next election. This is so reasonable that I wonder why we do not do so. The millions of dollars that would be saved could be used to help international organizations or associations, such as the Inter-Parliamentary Union, which delivers great speeches throughout the world and which, with some money, could promote democracy and peace in the world.

[English]

If I am not there when the committee meets, I hope that you will remember to ask these questions. How much does it cost? I do not want to be philosophical here. How much does every change that takes place between elections cost?

[Translation]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** I am totally in agreement with certain of the principles raised by Senator Prud'homme. More particularly, I would like to raise the question of the process underlying this bill.

When a simple bill arrives in the Senate, it is passed promptly, but when we engage in a process of reflection on a bill, of necessity we raise questions of principle such as the one relating to the process. Generally, one would assume that changing the name of an electoral district would relate to serious circumstances, such as riding redistribution. In the bill we have received, we have a list of ridings that wish to have a name change. At first sight this gives the impression — although I hope I am wrong about this — that the MPs see the ridings as their property. So they change names when they feel like it. Taking a riding in the province of Quebec for an example, I wonder how many senators were consulted, if only out of courtesy, by representatives of ridings that came within their electoral districts on the necessity of a name change.

In the case of Ontario ridings as well, if I remember correctly, with the same names provincially and federally, their geographical limits were the same for both. So when such a change takes place, it affects the situation in a province directly. As all honourable senators are well aware, when a bill concerns the provinces, there is a Senate rule which states that the provinces have a right to be consulted. This is another matter of principle that arises. That said, I would like to move adjournment of the debate, on behalf of Senator Nolin.

On motion of Senator Kinsella, for Senator Nolin, debate adjourned.

[English]

• (1840)

## PRIVILEGES, STANDING RULES AND ORDERS

### FOURTH REPORT OF COMMITTEE —DEBATE ADJOURNED

The Senate proceeded to consideration of the fourth report of the Standing Committee on Privileges, Standing Rules and Orders (questions of privilege of Honourable Senators Andreychuk and Bacon) presented in the Senate on April 13, 2000.—(*Honourable Senator Austin, P.C.*).

**Hon. Jack Austin** moved the adoption of the report.

He said: Honourable senators, I should like to make a few comments with respect to the fourth report of the Standing Committee on Privileges, Standing Rules and Orders. The report is based on two references from the Senate, the first being the one of October 13, 1999, which resulted from a question of privilege raised by the Honourable Senator Andreychuk based on the leak of a report of the Standing Senate Committee on Aboriginal Peoples that appeared in the *National Post* on Saturday, September 11, 1999. The second question of privilege discussed in this report was raised by Senator Bacon on

November 24, 1999, and relates to stories that appeared in *Le Soleil* and *The Toronto Star*.

The Senate found a prima facie case of breach of privilege in each of those questions raised in the Senate and referred those questions to the committee. The committee reviewed both questions of privilege in its proceedings.

Senator Andreychuk asked the committee not to find fault but to review the practice of committees and to make recommendations with respect to that practice and the way in which committees and their chairs could endeavour to reduce, if not avoid, questions of leaked reports. I need not describe to honourable senators the concern of the Senate with regard to leaked reports. The Senate has taken the question of a breach of privilege very seriously indeed.

Senator Bacon wished the standing committee to be more active in its investigation of her breach of privilege, in particular because of the possibility of substantial damage being done to various individuals as a result of the leak of the draft report, which had financial consequences on which possible benefits might be confirmed by prior knowledge.

The committee, in each of those cases, has reviewed the practice in the other place, the practice in the House of Commons in Britain and the practice in both the Senate and House of Representatives of Australia.

We found much to appreciate in the British and Australian practice. In those cases, as a result of their experiences, the practice has evolved to request the committee from which the breach has been alleged to undertake, of its own motion, the first investigation of that breach, the idea being that that committee is closest to the event and therefore the committee should, immediately on a belief that a breach may have taken place, inquire into the possible causes of the breach and the responsibility therefor.

That would not in any way prevent any senator from raising the question in the Senate itself. However, in the case where a committee reported to the Senate that it was undertaking an investigation of the question of a breach, the Speaker would defer the debate on the breach of privilege until the committee had made its report, whether the report was a belief that there was a prima facie breach or that there was no prima facie breach. That particular committee would also be asked to determine whether the breach of privilege caused any substantial damage. The reason for that request in its operations is to set an objective for the finding of sanctions by the Standing Committee on Privileges, Standing Rules and Orders.

The way the process would work is as follows. If the committee within which the breach is alleged reported that it believed that there was a prima facie case and it had carried out an investigation and the investigation showed either substantial or only nominal damage, a report would be made to the Senate. The Senate would debate the report, and, in the Senate's wisdom, it would either accept the report of the operating committee or alternatively accept the report and refer the matter to the Standing Committee on Privileges, Standing Rules and Orders to determine what sanction should be levied by the Senate.

[ Senator Prud'homme ]



These are the practices in the British House of Commons and in the Australian Senate and House of Representatives, and they recommended themselves to our committee. In our report, we are making such a recommendation to this house.

We have some additional observations, honourable senators, with respect to the practice of committees. We believe that the level of consciousness of the importance of committee confidentiality needs to be raised substantially. In our report, we have asked committee chairs to be more careful in the circulation of their reports, not to circulate draft reports except to senators, to number those reports, and to identify the people in the committee room *in camera*. We have asked committee chairs not to allow non-senators and non-committee staff into the room except as they believe their presence is necessary, not simply to let people sit around the room because they are staff members of various senators. We have asked that the attendance in committees *in camera* be taken.

We have also put forward a caution with respect to the employees of the Senate, those people who are permanent employees. While there is a provision in their employment contracts with respect to confidentiality, our suggestion is that there should also be additional advice to them — although we have no fault to find, I want to say immediately, with respect to the performance of Senate staff.

There is, however, the problem of temporary people, people on contracts. These people come in because they have a specialty or an expertise to contribute to the committee, but they are not necessarily part of the Senate culture, nor do they adopt the Senate culture or feel comfortable with it. One of our problems is that, in a number of cases, people who have expertise also have points of view, and if they are not comfortable with where the committee is going, they may decide to be a little bit adversarial with respect to the way in which the committee is handling its particular business.

• (1850)

Senator Pearson sent to the committee a letter raising various issues regarding *in camera* proceedings. The committee found Senator Pearson's letter quite relevant to its work in this instance. The sixth edition of Beauchesne states that committees should make clear decisions on how to circulate draft reports, on how to deal with evidence and on the publication of their minutes.

We do not wish to interfere with the discretion and the responsibility of the chairs of committees, the role of the steering committees or the rights of the members, but it is important for the chairs and the steering committees to agree in advance on the procedure for handling *in camera* hearings and for discussing reports.

Since our report to the Senate, a new *prima facie* finding of breach of privilege was made with respect to the work of the Standing Senate Committee on Banking, Trade and Commerce. Our committee in its report urged that the very committee that suffers an alleged breach should carry out the initial investigation. The Senate has not yet debated, discussed or concluded its views on our report, so I simply want to advise honourable senators that, tomorrow, the Standing Committee on

Privileges, Standing Rules and Orders will commence to act as if it is the committee from which the alleged breach has sprung. We will carry out an inquiry that I hope will help in developing the model by which committees will deal with matters of this kind. Hopefully, there will be very few matters in the future.

On the question of sanctions, the United Kingdom and Australia take breaches of privilege very seriously. There, if a member of the parliament is found in breach of privilege, the member's right to sit and to participate in the business of the chamber is suspended for a period of time. That period of time is decided by the committee and approved by the chamber.

In addition, in those jurisdictions, a journalist who is found to have leaked a report of a committee is normally found to be in breach of privilege. Sanctions, usually relating to the right to be seen on the precincts of parliament, are levied.

The business of freedom of the press and the convention in our two houses of not dealing with journalists in breach of privilege have sprung up over a period of time. I want to be clear. The committee for which I am reporting is not recommending that any action be taken against journalists.

As I noted last week in the Senate, the journalist who printed excerpts of a Banking Committee report made it quite clear in his article that he was quoting from a draft report that had not yet been released. He referred to the fact that it would appear in the next few weeks. In both Britain and Australia, that would have constituted a clear breach of privilege by the journalist.

I am not doing justice to the actual text of this report. I urge honourable senators to read it. It is not a long report; it is carefully written. The Standing Committee on Privileges, Standing Rules and Orders would like the Senate to receive and approve its report and to adopt the new procedure with respect to questions of privilege that I have outlined. I believe this is a more workable system than the one currently in the rules.

**Hon. Anne C. Cools:** Honourable senators, I thank Honourable Senator Austin for his excellent work. I am looking at this report with some interest. He made reference in his speech to a letter from Senator Pearson. The report itself, at paragraph 31, refers to the letter. To the extent that the committee received the letter from Senator Pearson, perhaps the Senate should also have the benefit of that letter. Would Senator Austin table a copy of that letter, please?

**Senator Austin:** Honourable senators, I will look to see whether the letter is written as personal and confidential or whether it contains any restriction. I will then advise the honourable senator. I should like to talk to the author of the letter to obtain her consent in that regard.

**Senator Cools:** I am reading from the report of the committee and it states:

By letter dated December 8, 1999, Senator Landon Pearson has raised various issues relating to *in camera* committee proceedings, which are very relevant to the issues covered by this report.

I can only assume that, to the extent that you put it on the record of the Senate chamber, that you intended the Senate to have some knowledge of it. It seems to me that it is entirely in order. To the extent that you are asking the Senate to approve your study, it is entirely proper that the Senate should have a copy of it.

**Senator Austin:** Honourable senators, Senator Pearson is here. Perhaps she can assist.

**Senator Cools:** I have no objection to that.

**Hon. Landon Pearson:** Honourable senators, I will discuss this with Senator Austin. I have no objection to that letter being tabled here in the Senate. I have to be sure it is the correct version, because I did some editing and improving with the help of some colleagues. We will discuss it, but I have no objection in principle to the request of the Honourable Senator Cools.

**Hon. Marcel Prud'homme:** Either you are tabling it or not.

**Senator Cools:** Honourable senators, this is an interesting situation. The author of the letter, Senator Pearson, says she has no problem with the letter being tabled here in the Senate. Senator Austin is saying he has some concerns about confidentiality. This would almost raise a whole new question of privilege, which I would be prepared to address. Can such a letter be confidential when the Honourable Senator Austin is asking the Senate to approve the report? That can be left for another day.

**Senator Austin:** Honourable senators, I would reply to Senator Cools in this fashion. It is important for a committee chair to be very careful with material that is submitted. I would extend the same courtesy to any senator. I would make an inquiry to see whether the senator had any objection. I am delighted to have my concern about the proper procedure removed by the remarks of Senator Pearson.

I would just add that paragraph 31 does not contain a recommendation by the committee for which the committee is seeking inclusion in the rules. It is an observation with respect to how *in camera* hearings might be conducted. It is not part of our report on the questions of privilege.

**Senator Cools:** Honourable senators, the question before us is the adoption of the report in its entirety, unless Honourable Senator Austin is saying that that portion is not part of the report.

We should commend the Rules Committee, because some of these questions have been lying dormant for quite some time. In recent years, Senator Kinsella and I have raised many of these questions of privilege hoping that, at some point in time, the Senate would give them serious attention. To that extent, I welcome the kind of intense work the committee has done.

• (1900)

On the question of leaks, Senator Austin knows that I feel strongly about members violating confidence and trust here, and revealing such important information to the media.

In any event, I have a great deal to say about this matter. I am most interested in it. Every day, it seems, one opens up the

newspaper and there is a story about another leak. There once was a time when one saw no such reports about the Senate. I am not speaking to the matter today. My intention was to simply put those questions to Senator Austin. Having said that, I should like to take the adjournment so that I can speak to the question in a more fulsome manner.

On motion of Senator Cools, debate adjourned.

## NATIONAL DEFENCE

### NEED TO JOIN WITH UNITED STATES IN MISSILE DEFENCE PROGRAM—INQUIRY—DEBATE CONTINUED

On the Order:

Resuming debate on the inquiry of the Honourable Senator Forrestall calling the attention of the Senate to the need for Canada to join the United States in National Missile Defence.—(*Honourable Senator Taylor*).

**Hon. Douglas Roche:** Honourable senators, the government's plans to have cabinet examine the issue of Canada's participation in the national ballistic missile defence system, which is now being developed by the United States, escalates the importance of the debate on this subject. Senator Forrestall, whose high regard in the Senate has been earned by his many years of service in the two chambers of Canada's Parliament, made an important contribution. My own contribution, from a different perspective, centres on these main points: first, what the U.S. National Missile Defence program, known as NMD, would do, and the opposition publicly expressed by the closest allies of the U.S.; second, why NMD is a profound danger to international stability; and, third, why it would be a mistake of unprecedented proportions for Canada to take part in such a program.

First, the \$60-billion NMD system is intended to provide a defence of all 50 states in the United States against small-scale attack by intercontinental-range ballistic missiles. The primary argument made for immediate deployment is the possibility that emerging missile states hostile to the U.S., such as North Korea, might soon acquire ICBMs and use them to attack U.S. territory. The proposed NMD system would use ground-based interceptors deployed initially at one site and eventually at two sites supported by an extensive network of ground-based radar and space-based infrared sensors. This system uses impressively advanced technology.

Since tests have so far proved inconclusive as to whether the system will work, another test is scheduled shortly, after which President Clinton has said he will make a final decision whether to commit the U.S. to deployment. However, it is precisely the deployment of such a system that the Anti-Ballistic Missile Treaty, ABM, signed by the U.S. and the former Soviet Union in 1972, was designed to stop. The ABM was designed to disallow the building of defensive systems in order to discourage the building of more offensive weapons to overcome these defences. The U.S. admits NMD contravenes the ABM treaty and is pressuring Russia to amend it or to abrogate it entirely.



Documents of the current U.S.-Russian negotiations were published in the *New York Times* on April 28. As the Union of Concerned Scientists explains in these documents, the United States asserts that Russia need not fear that the U.S. NMD system would undermine Russia's nuclear deterrent for two reasons. First, the U.S. argues that both countries "will possess, under any possible future arms reduction agreements, large diversified arsenals of strategic offensive weapons" and that both countries could deploy "more than 1,000 ICBMs and submarine-launched ballistic missiles with nuclear warheads over the next decade and thereafter" to give both countries "the certain ability to carry out an annihilating counterattack."

These documents, first obtained by the *Bulletin of the Atomic Scientists*, demonstrate that to deploy its NMD system, the U.S. is willing to give up indefinitely the potential for cutting the Russian arsenal below about 1,000 missiles. If the U.S. is telling Russia that retaining a large arsenal for the indefinite future is its hedge against a U.S. NMD system, then the U.S. cannot credibly argue that it is also taking steps toward deep reductions or the elimination of nuclear weapons.

Yet, just last week, at the Non-Proliferation Treaty Review Conference at the United Nations, which I attended, Secretary of State Albright and other U.S. government officials sought to assure the rest of the world that the U.S. remains committed to fulfilling its obligations under the NPT to pursue nuclear disarmament. These documents reveal just how empty those assurances are.

To say that the international community is in an uproar over U.S. intentions puts it mildly. There is consternation. The issue has not only split the U.S. from Russia but virtually isolated the U.S. in the world community. Even the nuclear partners and strongest allies of the U.S. are publicly trying to dissuade the U.S. from proceeding because of the irreparable harm it will do the nuclear disarmament agenda.

Russia's Minister of Foreign Affairs, Igor Ivanov, warned the U.S. that reduction programs will be jeopardized if the U.S. proceeds with NMD. The ABM treaty is a cornerstone of the non-proliferation regime, he said, and cannot be tampered with. Whereas Ms Albright said there was no good reason why the ABM treaty could not be amended, Mr. Ivanov put it plainly by stating:

Compliance with the ABM Treaty in its present form without any modifications is a prerequisite for further negotiations on nuclear disarmament.

In his address at the UN, he made the same point several times. He said:

Further reductions in strategic offensive weapons can only be considered in the context of preservation of the ABM Treaty.

In other words, if NMD goes ahead, it is goodbye nuclear disarmament.

China is very wary of a Russia-U.S. deal on NMD. Ambassador Sha Zukang of China weighed in at the NPT review with an attack on any kind of ballistic missile defence system as "posing a severe threat to the global strategic balance and stability." He accused the U.S. of trying to seek absolute security for itself, an impossible task that is tantamount to a nuclear arms buildup. He warned that the international nuclear disarmament process would come tumbling down if the U.S. proceeds with NMD.

While more circumspect, the United Kingdom and France, nuclear allies of the U.S., both expressed similar concerns. Peter Hain, U.K. minister of state said:

Active missile defence raises complex and difficult issues. We have made it clear —

— to the U.S. and Russia —

— that we continue to value the ABM and wish to see it preserved.

Ambassador Hubert de La Fortelle of France said his country was "anxious to avoid any challenges" to the ABM "liable to bring about a breakdown of strategic equilibrium and to restart the arms race."

In addition, Javier Solana, former secretary general of NATO, speaking for the European Union, said NMD could actually "de-couple" the security link between the U.S. and its NATO allies, and this would indeed lead to chaos.

• (1910)

Honourable senators, the U.S. keeps saying it has to protect itself against "rogue" states and focuses on North Korea, Iraq and Iran, but there is no evidence that any of these states could manufacture a nuclear warhead. North Korea's missile program is primitive by world standards. Furthermore, the U.S. and North Korea are making progress in a cooperative program to eliminate the North Korean missile threat. An historic summit between North and South Korea is looming. Present trends indicate that North Korea's economy may collapse, democratizing trends in Iran could alter the direction of that country, and a post-Sadam Iraq may well restore friendly relations with the West.

In short, the threat from other countries is diminishing; yet, the proponents of NMD claim an enemy is lurking, precisely because they must be able to depict an enemy somewhere in order to generate the support of U.S. taxpayers. Moreover, as the brilliant U.S. analyst Frances Fitzgerald points out in her new book, *Way Out There in the Blue*, NMD is the successor of the discredited strategic defence initiative of the 1980s known as Star Wars and is driven by the ideologically based extreme right in the U.S. that seeks an impossible unilateral security to the detriment of arms control and disarmament agreements of the past 30 years.

The motivation of this band of ideologues, which has captured control of the U.S. Congress, is to prepare the way for the U.S. military dominance of outer space. The spectre of a puny North Korea as the rationale for NMD is but a subterfuge for the real goal, which is the development of weapons in space and the preparation for space-directed wars of the 21st century. In all of this, the profits for the military-industrial complex, already at historic highs because of the \$280-billion annual defence budget of the United States, will be spectacular.

Honourable senators, NMD is the trap now waiting to be sprung on Canada.

As the U.S. geographic partner in North America, U.S.-Canada defence has been intertwined for decades. The NORAD agreement, developed during the Cold War to warn of Soviet missile attacks, is an expression of the structural relationship between the U.S. and Canada. The structural agreements of NORAD and NATO defence systems cannot be tampered with lightly. Nevertheless, a concerted campaign to intimidate Canada into supporting and joining the NMD has been launched. Its most vocal advocates are the pipsqueak colonels of the Pentagon, as former prime minister Trudeau once called them, who are conjuring up irrational fears among some Canadians that the U.S. will stop protecting Canada if our country does not join NMD. Foreign Minister Lloyd Axworthy is being attacked because he said at the UN two weeks ago that "The proposed unilateral National Missile Defence would have serious implications for the NPT regime." As I have shown above, Mr. Axworthy was mild compared with what the rest of the world community is saying.

Honourable senators, in the late 1980s, when Canada was invited by the U.S. to join the Star Wars program, the same cheap threats were made that our country would suffer if we declined. After careful consideration, the Canadian government of the day said no. What happened? Nothing, except that the North American Free Trade Agreement and other economic benefits to Canada went ahead. If Canada could say no to missile defence madness in the Cold War, why can we not — politely, of course, as befits our role in international diplomacy — say no in the post-Cold War era?

Speaking of diplomacy, one of Canada's greatest military diplomats, Tommy Burns, who led our country in arms control negotiations, would be turning over in his grave at the idea of Canada becoming the laughingstock of the world in giving up our cherished ability to contribute to the building of peace by joining in such an ill-considered venture. So would other great Canadian internationalists, such as Lester Pearson, John Humphrey, Hugh Keenleyside, Saul Rae and King Gordon.

The time has come — and many, many Canadians are watching Ottawa carefully to see how we will come down on this matter — for the Government of Canada to state that the foremost priority for Canada is to build the body of international law represented by the UN system, not succumb to the militarists in the U.S. who want nothing better than to trumpet to the world that the highly-respected Canada has bought into NMD. Canada must not allow itself to be hoodwinked by being drawn into a matter that is being driven by U.S. domestic politics.

If Canada were to join NMD, it would have catastrophic consequences for our ability to continue arguing for the non-proliferation of weapons of mass destruction. At the moment, Canada is playing a major role to ensure that the Non-Proliferation Treaty — the review of which is ongoing in New York — remains intact as a bulwark against the spread of nuclear weapons. That is where Canada's efforts must remain focused.

Finally, the answer to future threats of ballistic missiles is to preserve and strengthen the existing web of military, political, economic and legal measures designed to prohibit, impede, isolate, expose and respond to the activities of potentially hostile state and non-state actors. The alternative to NMD does exist. It is the maintenance of international legal norms backed up by properly funded verification regimes, arms control, economic incentives, cooperative programs and export control systems. This approach builds the conditions for peace. Canada must go forward to peace, not backward to war.

**Hon. Senators:** Hear, hear!

**Hon. Marcel Prud'homme:** I should like to ask a question of the Honourable Senator Roche. He was kind enough to quote the Minister of Foreign Affairs, Mr. Axworthy, but in order to understand the full intensity of the debate, would the honourable senator speak to the comments of the Minister of National Defence, who seems to be in full disagreement with Mr. Axworthy? There was something very troubling for me when I saw for the first time, I must say, in my 37 years in Parliament two ministers with major portfolios "perceived" to be in full disagreement. In order to understand your strong views — and I do because I share them — would the honourable senator comment on the Minister of National Defence's view of the position Mr. Axworthy has so well expressed?

**Senator Roche:** Honourable senators, I do not believe that the Minister of National Defence, Mr. Eggleton, for whom I have high respect, has made a definitive statement in this respect. I quoted the words of Foreign Affairs Minister Axworthy, who spoke at the UN about two weeks ago to the Non-proliferation Treaty Review Conference. He clearly expressed great hesitation and reservation. I do not believe that I can do justice to Mr. Eggleton without a definitive statement on his part.

**Hon. Bill Rompkey:** Honourable senators, I find the arguments of Senator Roche very persuasive and I congratulate him on his speech.

There seems to be some disagreement regarding whether the rogue states do, in fact, have nuclear capability. I was in Washington some weeks ago and heard from officials at the Pentagon that four or five rogue states had the ability to reach the U.S. with nuclear weapons. They were misinformed, uninformed or deliberately misleading us. I would hate to think that officials of the Pentagon would do that. I am puzzled on a statement of fact. If, indeed, these states do have the weapons, and if, indeed, the weapons can reach the United States, then what does the United States do to protect itself given that some of these rogue states will not participate in the international structures that are put in place for nuclear disarmament?



The second question is rather puzzling, but regarding the first question of fact, perhaps the honourable senator could enlighten me.

• (1920)

**Senator Roche:** I believe that a concerted campaign is underway using the old methods of propaganda to convince the public that they are in danger from countries on the grounds that they possess weapons. The countries that have been named — Iran, Iraq and North Korea — do not possess nuclear weapons. They do not have a delivery capacity capable of spanning the space to reach the United States.

Moreover, with respect to their participation in international agreements, the three countries that I have named are participants in the non-proliferation treaty. Former defence secretary Perry has led a delegation on behalf of his country to North Korea to build up the relationship between the two countries. The United States has already spent enormous sums of money financing the development of reactors in North Korea for peaceful uses. The partnership that can be developed, as pointed to by the fact that there will be a summit between North Korea and South Korea shortly, illustrates that the so-called adaptation of rogue states endangering us is greatly exaggerated by those who wish to gain in political, economic and military terms from scaring the public.

On motion of Senator Taylor, debate adjourned.

## FUTURE OF CANADIAN DEFENCE POLICY

### INQUIRY

On the Order:

Resuming debate on the inquiry of the Honourable Senator ForreSTALL calling the attention of the Senate to the future of Canadian Defence Policy.—(*Honourable Senator Rompkey, P.C.*).

**Hon. Bill Rompkey:** Honourable senators, it is a great pleasure for me to rise to speak to the subject raised by my colleague from across the way. I must say that my remarks will be both complementary and complimentary. I applaud the honourable senator for raising this matter. I must say that I concur with much of what he had to say — perhaps not all, but much of what he had to say. I hope that will be evident in my remarks.

In 1994, I had the privilege of co-chairing the Special Joint Committee on Canada's Defence Policy. As a matter of fact, my co-chair is to my right. I was then in the other place, and he was in the Senate. Senator ForreSTALL was a member of that committee. We produced the final report "Security in a Changing World," which was our review of defence policy. I might say that at that time we were one of the few jurisdictions in the world where a parliamentary review had been done before a bureaucratic and government review.

We were quite pleased because, with the release of the white paper, the Canadian Forces, they said, as did we, were to be

multi-purpose, combat capable, able to fight alongside the best. The white paper recognizes that, although we cannot cover the entire military spectrum, the Canadian Forces must be capable of defending Canada as well as defending North America in cooperation with the U.S. Two-thirds of what we recommended found its way into the white paper. We were pleased. It was satisfying for us as parliamentarians to have that reaction. However, when you examine it more carefully, a few of the most important recommendations were not followed, and that is what I wish to address today.

Some of the key rejected committee recommendations were those addressing the defence budget and the size of the regular forces. In rejecting both of those basic components, the setters of our defence policy have severely restricted the ability of the Canadian Forces to respond to the government's own objectives.

Certainly the objectives of defence policy outlined in the 1994 white paper remain sound. However, there is a serious doubt in my mind, as I think there is in the mind of Senator ForreSTALL, that the Canadian Forces today have the ability to carry them out.

Our 1994 joint committee had advised the government that defence funding should not fall below the 1994 levels. We argued that further reductions would fundamentally impair capabilities. The white paper did not endorse that key recommendation, and we have seen defence budgets fall by 23 per cent, or \$2 billion, since 1994.

Moreover, the regular forces have been reduced from 75,000 to 60,000 in recent years despite the warning of the joint committee that a level of 66,700 represents the minimum capability required for the Canadian Forces to play a meaningful role at home and abroad.

While DND's budget was cut by some 23 per cent during the 1990s, more recent and intense pressure on the military to respond to numerous overseas missions prompted the government to invest new money. Events such as the pull-out of the Canadian Forces from Kosovo peacekeeping missions and delays in the East Timor peacekeeping deployment because of the breakdown of transport planes were some of the more obvious reasons that forced the government to act and financially rescue the cash-strapped Canadian Forces.

There has been a second consecutive increase in the DND budget following the government's federal budget for 2000. According to that budget, the Canadian Forces will receive \$1.7 billion in new money over three years. That represents \$400 million this present year, 2000-2001; \$500 million in the next fiscal year, and \$600 million in the following year. DND says that the increase in their budget will head off possible layoffs of soldiers and will allow the ministry to begin looking at purchasing new equipment, including 28 Maritime helicopters to replace the Sea Kings, upgrading the CF-18s and the Aurora patrol planes and the Hercules. While the military may well welcome these budgetary increases after decades of cuts, they fall short of the increases that our allies, Australia and the United States, recently gave their respective armed forces.

We must also consider that 10 per cent of that new money has already been spent because DND must use \$180 million of its new money to repay the federal government for loans it incurred to finance the Y2K operation. It has already committed to using a significant portion of the remaining money to pay for quality of life programs. Between the money spent on peacekeeping and the portion allotted to debt repayment and for quality of life, there will be no additional funds to invest in capital equipment, training, and the crucial areas where additional funding is desperately required. Therefore, this limited influx of new money hardly raises the basic budget line. The military still will have to scramble to find ways to keep personnel above 60,000 and to pay for new equipment.

Just as important as inadequate funding is the issue of the reduction in military personnel. Despite a significant increase in the DND budget, actual troop numbers may well fall below the white paper's 60,000 mark this year. Indeed, the Canadian Forces will withdraw soldiers from peacekeeping missions to reduce the number of troops on foreign soil from 4,500 to 3,000, as the current budgetary increases will not allow the Canadian Forces to sustain their current level of overseas deployment.

• (1930)

Despite public support, the institution is stretched beyond capacity. It is increasingly questionable whether our Canadian Forces can sustain the current operational tempo. Many men and women are serving in their fourth or fifth tour overseas in the last seven years. The cycle of increased operational deployments, using the same people over and over, is degrading Canada's ability to respond at all.

I should like to briefly address the conditions to which our forces find themselves exposed. Quality of life programs are certainly where DND has placed the most emphasis in recent years and the department has been successful at implementing changes. A significant portion of the new money from the 2000 budget will be allocated to the quality of life reforms, including packages that increase pay, benefits and disability coverage. While this is definitely a step in the right direction, quality of life programs are not remedying the fact that troops are overworked and overburdened with a terribly high operational tempo and dwindling forces. Quality of life programs cannot rectify the roster of problems that force troops to work with outdated and unreliable equipment. Money invested in quality of life programs is, without a doubt, a good investment. However, it also shows that more funding is needed to address the other crisis in the Canadian Forces.

One of the most important aspects of our forces is the reserves. DND is implementing the 36 accepted recommendations of the report of the Special Commission on Restructuring the Reserves. It has already fully implemented eight of the recommendations, four of which involve support for both the cadet and Canadian ranger programs, and four of which recognize the overall composition of the Canadian Forces and the need to eliminate administrative differences between the regular and the reserve force.

The harmonizing of compensation and benefit entitlements, which is of particular importance to personnel, is well underway with the introduction of this program that significantly improves

reserve pay. Reserve force pay rates are now set at 85 per cent of regular force rates and all future pay initiatives apply to all members of the Canadian Forces.

While implementation of the remaining 28 recommendations is underway, most are focused on land force reserve restructuring, which is proceeding in two concurrent phases. To date, phase one, which involves infrastructure and establishment, has addressed the introduction of total army establishments, resulting in the replacement of 14 militia districts with an initial organization of 10 brigade groups. The challenge of realigning the structure at the unit level, with the potential for adjustments to regimental organizations, lies ahead and will be the focus in the coming months. Phase two will address other longer-term issues, including training, mobilization, equipment, policies and bands.

I look forward to the report of John Fraser. I understand it is in the hands of the minister now. I have not seen it. However, I am alarmed at the indication of the differences that exist between what that report might say and what the department is planning for the future. We have our work cut out for us to monitor exactly what will happen with the rest of the restructuring of the reserves.

In its 1998-99 interim report, the minister's monitoring committee on change has been especially critical of the implementation of reforms related to the restructuring of the reserves. Ministerial decisions to shape the restructuring process have not been implemented. The committee found that the Canadian Forces had abandoned most of the main tenets of restructuring, and far too little has been accomplished since the 1988 and 1999 reviews.

While the reserve forces can and do support the regular force, both on missions overseas and domestically, there are limitations as to how much reliance can be placed on them. Following attempts from the early 1990s to deploy peacekeeping contingents with a high proportion of reservists — up to 40 per cent — the Canadian Forces subsequently placed a limit of 20 per cent reservists in any single contingent because of the costs of training and the loss of unit cohesion.

Current defence planning, as reflected in the Defence Planning Guidance 2000 and Defence Strategy 2020, emphasizes rapid response to developing crises, something that cannot easily or cheaply be accomplished by reservists. In addition, the absence of guaranteed call-out means that domestic operations must have a backbone of significant numbers of regular force troops even if a large portion of reservists are deployed.

As always, the bottom line seems to be money. Lack of funds is also having an extremely negative effect on training and equipment. This, in turn, affects the core capability and readiness of the Canadian Forces. Close to half of the departmental budget reductions since 1994 have been borne by the capital equipment budget. In 1996, following a series of budget reductions, the department made a commitment to avoid repeating the experience of the 1970s, when the "rust-out" became a serious problem. Despite this commitment, long-term capital plans and defence services program currently forecast a decline in equipment spending over the next five to 15 years.



The capital budget of the Canadian Forces now stands at about 90 per cent of its overall budget. The Auditor General warned in 1998 that DND faces the eventual rust-out of its equipment if the capital budget is not increased.

Strategy 2020, which was released last summer, sets a five-year target of 23 per cent of the defence budget for capital investment. However, DND's last attempt to hit a target for equipment purchases in the late 1980s and early 1990s was a failure.

Honourable senators, inadequate funding has led to numerous deferrals, delays and cancellations in the capital acquisition process. Improper equipment has also compromised the capability of Canadian Forces, both abroad and in their domestic missions. There are significant gaps in strategic surveillance and only a limited capability to exert our national will in the very demanding environment of Canada's Arctic. Inadequate resources also mean that Canada is finding it increasingly difficult to keep up with technological advances.

When our joint committee submitted its report to the government, it devoted an entire section to the role of Parliament. This section of recommendations was completely overlooked in the white paper and continues to be ignored and overlooked. Recommendations such as those to create a permanent standing joint committee on defence or an annual day of debate in Parliament to discuss defence policy are recommendations that must be acted on not by DND, but by Parliament directly. Ultimately, Parliament has the major responsibility for its actions and contributions in the area of defence policy.

The National Defence Committee of the House of Commons has done some useful work, in particular its study and report on the quality of life in the Armed Forces, but it has not addressed the core operational problems that plague the Canadian Forces and undermine DND's mandate. Not only have the deficiencies and shortages in the Canadian Forces impacted directly on capability and readiness, they have also drawn the attention of international allies and the domestic public. NATO has expressed the view that Canada is not pulling its weight in multilateral and bilateral security organizations.

**The Hon. the Acting Speaker:** I regret to inform the Honourable Senator Rompkey that his time for speaking has expired. Is there unanimous consent for the honourable senator to continue his speech?

**Hon. Senators:** Agreed.

**Senator Rompkey:** Thank you. I am nearing the end of my speech, honourable senators.

The Secretary-General of NATO, Lord Robertson, pointed out that Canada is second to last among NATO members in terms of defence spending as a percentage of GDP. Despite our excuses, we are far from the only country dealing with financial limitations and the restructuring of armed forces. Defence spending has decreased in most NATO countries, but Canada's

overall expenditures remain among the lowest. In 1997, Canada spent 1.3 per cent of its GDP on defence, compared with 3.4 per cent by the United States, 2.7 per cent by the United Kingdom and 1.6 per cent by Germany.

The Canadian public is also skeptical about the forces' capabilities. A survey by the Toronto-based Pollara public opinion firm in early 1999 showed that 69 per cent of respondents felt that the military did not have the equipment to do its job. Parliament is also beginning to question further reductions to the defence budget. Many MPs are now pushing for a five-year program of budget increases. The difficulties are well known. Increased pressure to intervene in outbreaks of violence around the world has put new strains on the services, and technological changes are revolutionizing the way wars are fought. In this volatile environment, our forces have undergone massive cuts. In the past decade, the number of military missions has tripled but the number of members has dropped from 90,000 to fewer than 60,000 in the year 2000-2001.

• (1940)

About \$2.7 billion was cut from the forces between 1994 and 1999. Without support and adequate funding, DND will inevitably continue to face persistent problems that can lead to the kind of scandals and cover-ups we have seen all too frequently in recent years. We have simply not done enough. Partial measures and partial successes are not good enough. Canadians deserve better.

**Some Hon. Senators:** Hear, hear!

**Hon. Colin Kenny:** Honourable senators, would the honourable senator entertain a question?

**Senator Rompkey:** Of course.

**Senator Kenny:** I should like to associate myself with the remarks made by the Honourable Senator Rompkey. I had the opportunity to serve on the special committee that was so ably chaired by Senator Rompkey and Senator De Bané.

My question to you, Senator Rompkey, is this: Do you believe that the special committee would have made the same set of recommendations that it did make had it known at the time what its funding would be in the coming years?

**Senator Rompkey:** Honourable senators, that is a difficult question to answer. We are looking back at what the special committee would have recommended, had it known. I think that we were right in our recommendations. I think we established a bottom line. However, I do not think that bottom line has been followed. I think we have fallen below that bottom line. The reality now is that I, and I think many others, believe that we do not have the capability to meet all of the missions that we have entered into, both here and abroad. We have given certain commitments to Canadians, to NORAD, to NATO and to the UN. I do not believe that we can meet all of those commitments, given the structure and the budget that is in place at the present time.

Having set a benchmark, I am disappointed that that benchmark has not been followed. I do believe that it is our responsibility, as parliamentarians, to continue that monitoring. I think there is a role for us, both as parliamentarians and as senators, to ensure that what we recommended in 1994 is put in place.

**Hon. J. Michael Forrestall:** Honourable senators, I, too, have a question for the Honourable Senator Rompkey. First, I wish to thank the honourable senator for his remarks. I am tempted to ask his co-chair if he agrees. He is nodding in the affirmative; that is understandable. It was a good piece of work, and I think it served thoughtful Canadians well. However, it did not serve government, for whatever reason.

I wish to ask the honourable senator whether or not we were a little remiss in some of our responsibility by not having been a bit more forceful — and I am sorry the co-chair of the committee is not here now — about the establishment, either within this chamber or jointly with the other place, of the type of oversight capacity that might have allowed us and Canadians, through the presentation of their views to us, to make the point that the rust-out level has long since been reached.

I could tell honourable senators in privacy that the numbers that we believe to be in the Canadian Armed Forces are not there. We are seeing that in the flight from Sierra Leone. We read it in *The Globe and Mail* this morning. Captain Jackson, a very distinguished reservist officer, implied the difficulties. What would the senator have to say about the usefulness of this chamber going alone? We know that the argument is that we are small in numbers and if we set up another committee, it cannot meet on Tuesday, Wednesday or Thursday. If it wants to function, it may have to sit on Monday and Friday. Is there some merit in challenging that? If that is your bottom line, then let us try it. Let us see if it works. Senator Roche and I are engaged in debate concerning national missile defence. I wish members of the Senate — and I am sure the Honourable Senator Rompkey would agree — would join in the national missile defence debate also. It is critical.

I am asking about the platform. It is now late in the day and people are hungry and want to go home, I suppose, but these matters are more properly dealt with in a concerned committee that is knowledgeable. We do not have that capacity. Could the honourable senator comment on this issue? We have a missile defence program, a separate operation and maintenance and capital budgets. It is absolutely necessary that we look at it and that we find a green paper and a white paper. It is absolutely necessary to give the government the advantage of our best thinking in these areas. Could the honourable senator comment on that kind of platform?

**Senator Rompkey:** I shall be glad to do so. I am glad that this issue has been raised. That is something we can do in this chamber. For the last couple of years, many of us have supported establishment of a standing committee on national defence and security in the Senate. Far be it from me to put the Deputy Leader of the Government and the Deputy Leader of the Opposition on the spot, but I notice that they are both in the chamber, listening intently to both the debate and to the question of the Honourable Senator Forrestall, as well as the reply. Far be

it from me to put them on the spot in the chamber today; I simply wish to reinforce with them the feeling among many senators that the establishment of a Senate standing committee on defence and security is long overdue and should be proceeded with forthwith, because there is work to do.

**The Hon. the Acting Speaker:** Honourable senators, if no other senator wishes to speak, this inquiry is considered debated.

[Translation]

## PRIME MINISTER'S VISIT TO MIDDLE EAST AND PERSIAN GULF

INQUIRY—DEBATE ADJOURNED

**Hon. Pierre De Bané** rose pursuant to notice of Thursday, May 4, 2000:

That he will call the attention of the Senate to the visit of the Prime Minister of Canada to the Middle East and the Persian Gulf from April 7 to 20, 2000.

He said: Honourable senators, I have the honour to report to this House on the visit undertaken from April 8 to 20 by the Prime Minister of Canada, the Right Honourable Jean Chrétien, to a number of Middle East countries, namely, Israel, Palestine, Egypt, Lebanon, Jordan, Syria and Saudi Arabia.

I was very pleased that the Prime Minister invited a number of parliamentarians from both Houses of our Parliament to accompany him. Accordingly, in the company of Senators Marcel Prud'homme and Leo Kolber and our colleagues from the other House, Carolyn Bennett, Mark Assad, Yvon Charbonneau, Sarkis Assadourian and Irwin Cotler, I had the honour of being part of the parliamentary delegation accompanying the Prime Minister, the Right Honourable Jean Chrétien.

• (1950)

This is the first time in the history of Canada that the leader of the Canadian government has made such an extended visit to so many countries in this region, where we have been involved for so long.

We could even say that the decisive role played by Canada in the 1956 Suez Canal crisis not only allowed us to defuse a crisis involving the two former mother countries of Canada, France and England, but our participation also was a very important moment in the history of our country.

It was for his key role in defusing the Suez Canal crisis that Lester Pearson, the Minister of Foreign Affairs at the time, and later Prime Minister of Canada, was awarded the Nobel Peace Prize. It was during this crisis that Canada initiated the modern concept of peacekeeping by the United Nations.

Since then, Canada has taken part in all peacekeeping operations in the Middle East, including those of the first and second Emergency Forces, the Yemen Observer Mission, the Interim Force in Lebanon and the UN Special Commission.



Canada is convinced that peacekeeping operations are contributing to stability in the area, which in turn facilitates the peace process. Currently, 239 members of the Canadian Armed Forces are taking part in five separate peacekeeping operations and related missions in the Middle East.

On the Golan Heights, the UN force is observing the withdrawal of Israeli and Syrian forces. One hundred and ninety members of the Canadian Armed Forces are stationed there, one as the commanding officer.

The agency in charge of monitoring the cease-fire is made up of 11 members of the Canadian Armed Forces who mediate between Egypt, Israel, Jordan, Lebanon and Syria, and help other UN missions.

Six more members of the Canadian Armed Forces are part of the United Nations Iraq-Kuwait Observation Mission.

Thirty members of the Canadian Armed Forces are assigned to the Multinational Force and Observers (MFO), which monitors the disengagement between Israel and Egypt according to the Camp David Accord; either they are in staff positions or they work as air traffic controllers or in an administrative capacity.

Finally, there are two Canadians on the United Nations Monitoring, Verification and Inspection Commission created in December 1999 to carry on the inspection and destruction of ballistic missiles as well as chemical, nuclear and biological weapons in Iraq.

As well, Canada took part in two United Nations peacekeeping missions in Lebanon, one with the Observation Group in 1958-1959, and the other with the Interim Force in 1978.

Canada is a staunch supporter of the peace process in the Middle East, an active participant in multilateral negotiations and an important financial contributor to aid programs in the area. For close to 50 years now, Canada has been participating in the international community's efforts to promote peace in the Middle East.

The Madrid peace process was initiated by the United States and the former Soviet Union in 1991 with a view to finding a comprehensive solution to the conflict between Israel and the Arab States. For the first time since the State of Israel was created in 1948, the leaders of three Arab countries, Israel and the Palestinians sat down to discuss peace. The process resulted in a series of bilateral negotiations between Israel and its neighbours — Jordan, Syria, Lebanon — and the Palestinians.

These negotiations were long and arduous, which is a reflection of the complexity of the issues discussed and of the compromises necessary to ensure a lasting peace. The declaration in principle signed in Washington by Israel and the Palestinian Liberation Organization (PLO) in 1993, the subsequent interim agreements — signed in 1994 and 1995 — extending Palestinian autonomy to the West Bank and the Gaza strip, and the peace treaty signed in 1994 by Israel and Jordan were major milestones during these negotiations.

In 1992, the United States and Russia launched, in Moscow, the second phase of the Madrid peace process. The ministers of Foreign Affairs and the delegates of 36 countries — including officials from Middle East, Europe, Japan, China and Canada — took part in that exercise.

Multilateral negotiations complement — they do not replace — bilateral negotiations. Five working groups were set up: arms control and regional security, regional economic development, refugees, water resources and the environment. So far, Syria and Lebanon have opted to not participate until bilateral negotiations will have made more progress.

Canada is a strong advocate of a negotiated solution to the Arab-Israeli conflict and it fully supports the bilateral negotiations process. Its main objective is to help Middle East countries find ways to cooperate with one another.

Canada is one of the main partners in the multilateral process. It chairs the working group on refugees and it is a member of the steering committee that supervises the five working groups. I am pleased to pay tribute to Mr. Robinson, who chairs the working group on refugees. Canada also sits on the ad hoc liaison committee and coordinates international assistance to the Palestinian authority. The Canadian Minister of Foreign Affairs visited the region in 1997 and met with Arab and Israeli officials.

Canada is also a member of the working group on regional security and arms control. As a facilitator for confidence-strengthening measures in the marine sector, Canada hosted a number of events, including the symposium on marine safety, which was held in Nova Scotia, in 1997. Research and rescue experts from the Middle East got together on that occasion, at the invitation of the Canadian Coast Guard, with the support of the Canadian International Development Agency (CIDA).

Canada contributes technical know-how and development assistance to the working group on water resources and the working group on the environment. Under the aegis of CIDA, a training program for Israeli, Palestinian and Jordanian technicians specializing in water data has now been established.

The persistent crisis of Palestinian refugees displaced by the Israeli-Arab conflict is one of the most important issues that must be addressed as part of the Middle East peace process. Right now, there are 3.6 million refugees enrolled with the United Nations Relief and Works Agency for Palestine Refugees in the Near East. They live in Jordan, Lebanon and Syria, as well as on the west bank and the Gaza strip. All parties to the peace process recognize that, for there to be comprehensive and lasting peace in the Middle East, a just solution to the problem of refugees will first have to be found.

Under Canada's chairmanship, the Refugee Working Group, represented by Mr. Robinson, is trying to reunite families and improve the living conditions of refugees and displaced persons without jeopardizing their rights or their future status. We know that the refugee question is a difficult one. It is above all a matter for negotiation between Israel and the Palestinians, as are questions having to do with borders, settlements and Jerusalem.

The working group operates by consensus, according to rules set by all members. The main topics of discussion are data bases, human resources development — including manpower training and job creation — reunification of families, the development of the economic and social infrastructure, the well-being of children, and public health. Canada has hosted two of the eight plenary sessions held to date.

Although Lebanon is not part of the Refugee Working Group, Canada has worked with this government and with other countries concerned in order to obtain international assistance for Palestinian refugees in Lebanon and to ensure that the question of their future remains in the international consciousness.

The Refugee Working Group has helped the United Nations Relief and Works Agency to raise money for its peace implementation program.

• (2000)

It has collected more than \$90 million in U.S. funds for projects on the West Bank, in Gaza, Jordan, Syria and Lebanon. The group has provided financial support for training in the fields of public health, construction, small business, agriculture and public administration.

It has assisted Palestinian refugees in Lebanon to gain access to hospitals. It has delivered medical and health supplies to the United Nations Relief and Works Agency and the Red Crescent Society for Palestinians, as well as supporting their clinics. The Working Group has also created and partially funded a program to meet the urgent needs of Palestinian children. Member parties have also provided financial help to a large number of individual projects.

The parties making up the Working Group on Refugees have one humanitarian objective in common: to reunite families separated by the Israeli-Arab conflict. Thanks to their efforts, a greater number of people have been allowed into the West Bank and Gaza to relocate their family members. With the assistance of Canada and Kuwait, the relocation to Gaza of some 500 families from Camp Canada in the Egyptian Sinai is slated to be completed by the end of the year 2000.

The Working Group on Refugees has sponsored a number of initiatives to gather and analyze basic data with a view to defining the extent of the refugee problem, establishing priorities and assessing the impact of various political options. It is one forum in which regional parties can conduct a dialogue. The latest meeting, held in March 1999 in Paris, dealt with family reunification.

The Working Group on Refugees also encourages dialogue with the refugees themselves, by carrying out international missions to refugee camps, such as those to Jordan in 1994, 1996 and 1999, and to Gaza and the West Bank in 1998. Similar missions went to Lebanon in 1994 and 1997. I felt the need to give an overall picture of the Canadian contribution to this problem, which has been an immense tragedy for more than half a century now.

Now, after the visit made by a number of parliamentarians from this place and the other, accompanying the Prime Minister, I must say that this was the most exhaustive, the most thorough, visit ever conducted by a Canadian head of government in that region. This was a trip with many pitfalls, but there is no doubt that it was well worth taking. We were personally struck by the extremely warm welcome the Prime Minister received everywhere, from Jerusalem to Jeddah.

The Prime Minister had set four broad objectives for this trip, this visit to the Middle East and the Persian Gulf. First, to show that Canada continues to give importance to the search for a fair, lasting and global peace in the respect of dignity. The Prime Minister encouraged all parties to not lose sight of this objective. For there to be a fair and global peace, everyone must be treated with dignity.

Second, the trip enabled the Prime Minister to personally evaluate how Canada can help build and maintain peace. Third, the trip provided an opportunity to promote trade, investment and cooperation. The Prime Minister announced that a group of business people, under our Minister for International Trade, would be visiting the region before the end of the year.

Finally, the Prime Minister encouraged a dialogue on the values of democracy, human rights, good government and the rule of law. On the subject of the peace process, all parties are aware of Canada's policy based on the UN Security Council resolution and respect its fairness. The Prime Minister did not try to prescribe solutions. It is up to the parties to negotiate. However, he did encourage Prime Minister Barak, President Arafat, President Assad and the Lebanese leaders to continue and he listened to their points of view.

In addition, the Prime Minister assured them that Canada would be there to help achieve the peace agreements. On peacekeeping, I have already mentioned that Canada was part of the first peacekeeping mission in 1956 under Lester Pearson. We have taken part in every mission since. On the Golan Heights, the Prime Minister said that, if the parties so wished, Canada would look for new avenues of peacekeeping. In southern Lebanon, he also made a commitment to assess the circumstances and the requests made of him. Both Prime Minister Barak and President Assad cited Canada's positive contribution to peacekeeping in the Middle East.

On the question of refugees, I have already said that Canada's contributions to help for the refugees is among the most significant and we chair the Working Group on Refugees. When the Prime Minister met President Arafat, winner of the Nobel Prize for Peace, Mr. Arafat thanked Canada warmly for its leadership in the area of refugees and awarded a decoration to the Prime Minister.

**The Hon. the Acting Speaker:** Senator De Bané, your 15-minute speaking time is up. Honourable senators, is leave granted to allow the honourable senator to continue?

**Hon. Senators:** Agreed.



**Senator De Bané:** In addition to decorating the Prime Minister, President Arafat gave Senator Prud'homme the Order of Bethlehem 2000, which I have in my hands. Senator Prud'homme has worked relentlessly for many years to bring justice to the Palestinian people, and I want to pay tribute to him.

The Prime Minister of Canada, Mr. Chrétien, also visited refugees in Jordan's Souf camp. He assured them that Canada will do its utmost to make sure they are not forgotten by the rest of the world. He repeated to them that we must arrive at a fair solution, negotiated by the parties involved.

On the issue of promotion, dialogue and values in the region, the Prime Minister reminded everyone that Canada's mission is to build bridges. The Prime Minister announced that the Dialogue for Development Fund would be extended for four years, to promote a rapprochement between Israelis and Arabs.

On the issue of mine clearance, the Prime Minister announced an additional amount of \$500,000 for mine clearance operations in the Jordan Valley. As for the priority given to people, namely men, women and children, the Prime Minister proposed the establishment of a regional centre for human security, which would be based in Amman, Jordan's capital.

King Abdullah welcomed that innovative proposal to meet the needs of people across the whole region. In Lebanon, President Lahoud told us that the fact that we do not carry any excess baggage gave us special credibility in the region. Jerusalem's Jewish University gave an honorary degree to the Prime Minister of Canada to recognize the role played by Mr. Chrétien in the promotion of peace throughout the region.

The Prime Minister was the first foreign leader to visit the Arab community in Israel, in Nazareth, the largest Arab city in Israel. Shimon Peres, also a Nobel Peace Prize laureate, joined the Prime Minister to talk about tolerance and understanding to high school and seminary students, and to students at St. Joseph of Nazareth Secondary School, whose principal is Father Shoufani, the priest of Nazareth, who visited Prime Minister Chrétien in October.

I should like to say a few words about trade and other forms of cooperation. The Prime Minister has seen great potential for trade, joint ventures and investment. In Lebanon, accompanied by André Ouellet, chairman of Canada Post, he visited the Lebanese postal service, which Canada Post and other large Canadian companies are trying to revitalize. I saw the exceptional work that Mr. Ouellet and his team are doing, with the help of other Canadian businesses, to the great satisfaction of the Lebanese government. I think the visit by the Prime Minister of Canada has opened some doors in high places for Canadian businesses. I remember that when we met with the Jeddah Chamber of Commerce, every great businessman in Saudi Arabia was present and wanted to talk to the Prime Minister. I already mentioned that the Minister of International Trade, Mr. Pettigrew, will visit that region a few months from now.

The Prime Minister has also announced the renewal of the Canada-Israel Industrial R&D Foundation, a high technology

partnership. The Prime Minister also made the commitment, with Israel, to work with the Palestinians towards the creation of high technology partnerships. We also signed an agreement with Egypt on environmental technologies. Canada's know-how is in great demand in virtually every area.

In Egypt, Prime Minister Alaf Ebeid publicly complimented Canada. We are reliable partners with technical expertise and excellent management skills.

Finally, to promote dialogue and Canadian values, the Prime Minister said on several occasions:

We are not here to preach but to share our expertise and our experience.

Canada's experience can be relevant. Our Canadian Charter of Rights and Freedoms inspired the Supreme Court of Israel. Prime Minister Chrétien paid a visit to the chief justice of that court. The Prime Minister did not hesitate to broach sensitive topics with his interlocutors. I am thinking of the issue of human rights and governance of Palestinian authorities with Syria, Saudi Arabia, and crimes of honour in Jordan. He also spoke about the impact of globalization, tolerance in diversity, and respect for human rights.

At the dawn of the new millennium, the Prime Minister reminded people of the indispensable nature of democracy, which makes it possible to liberate the energies of all citizens of a country while simultaneously recognizing their fundamental rights.

In a word, the visit was an outstanding success. We were told how much they admired Canada, and what Canada had done for the region, one of the most troubled and tormented in the world.

In Saudi Arabia, I remember foreign affairs minister Saud, the son of King Faisal, telling us how much they appreciated the frankness of the Prime Minister. He added that Canada's traditional humility does not do justice to the importance of the role we are playing.

In short, this was an extraordinary visit and all because the Prime Minister of Canada had the courage to undertake it.

He is the first leader of the Canadian government to undertake such an important visit. Before getting to the main unflattering remarks of certain Canadian journalists, I wish to pay tribute to our diplomats working in these countries. In each country, I met with men and women representing Canada at our various embassies who are doing exceptional work. I wish to pay tribute to them, be they heads of mission or those working with them. I remember, honourable senators, in Cairo when the Prime Minister of Canada hosted a state dinner. The entire Egyptian cabinet was present. Who do you think was the master of ceremonies? Ms Isabelle Martin of Quebec City, a young diplomat at our embassy. She addressed the gathering in three languages: Arabic, French and English, with no prepared text, and you should have heard the applause. It was like that in each country. I was proud to see these Canadian diplomats.

[English]

Before commenting on the various criticisms that were made about our Prime Minister in the area, we should point out that it was quite evident to those accompanying the Prime Minister that certain journalists had already decided, before even arriving in the Middle East, to attack Mr. Chrétien, an attitude so contrary to the ethics of journalism that many other reporters signalled their own discomfort with it. The divergence between the coverage of the tour and the tour itself was such that the participants had the impression that two very different trips were going on — the one we were making with the Prime Minister and the one reported in the Canadian media.

The malevolence of some reporters reached a peek during a background briefing given by Canadian diplomats in Damascus, Syria. It would be hard to imagine the rude and aggressive treatment that some reporters inflicted on our ambassador in Syria, Mrs. Alexandra Bugailiskis. The hostility was palpable, many times descending into sheer bad faith. Even so, she skilfully handled the interrogation. During the last press conference in Jiddah, Saudi Arabia, TVR reporter Lina Dib, who filed some of the most biased and unkind stories, had the nerve to ask the Prime Minister if he had been wounded by the attacks that she had herself authored.

This was the first official visit by a Canadian Prime Minister to the Middle East. Mr. Chrétien was very well aware that he was travelling ground so heavily mined as to cause his predecessors — all of them — to refrain from visiting the region. He was, on the other hand, convinced that it was time for Canada, after having been engaged in the region for more than 50 years, particularly since 1956, to make an official visit that would cement bilateral relations and help advance the cause of peace.

In fact, the visit gave important momentum to the political dialogue between Canada and each of the countries visited, helped boost the exports of Canadian businesses working in this important market, encouraged the peace process in which Canada is very much involved, highlighted the views of Canada as chair of the committee struck at Madrid on refugees, encouraged adherence to the Ottawa treaty on anti-personnel landmines, and, in Amman, saw the embrace of the Canadian initiative to create a regional centre for conflict resolution to help the parties of the region — Egypt, Israel, Jordan and the Palestinians, to begin with — fortify peace and undertake different programs such as professional training for peacekeepers, the reinforcement of democratic institutions and judicial reform. The benefits of a visit by our Prime Minister will continue to be felt for many years to come.

The purest proof that the media stories had no connection with reality is to point out that not one of Prime Minister Chrétien's interlocutors expressed criticism, disapproval or reservations of any kind regarding his statements. Even more, each one of them insisted on expressing, with clear and eloquent gestures, the quality of the relations they had fashioned with the Canadian Prime Minister. President Mubarak publicly expressed the warmth of his friendship with Mr. Chrétien, and during a dinner hosted by Mr. Chrétien almost the entire Egyptian cabinet were present.

[Senator De Bané]

[Translation]

I mentioned the dinner at which the master of ceremonies was Ms Isabelle Martin.

[English]

The same thing happened in Israel at a dinner hosted by Prime Minister Barak. Nobel Peace Prize winner Shimon Peres set aside almost an entire day to join Mr. Chrétien at an unprecedented event in Nazareth about which there will be more later.

It is difficult to imagine the three principal leaders of Lebanon — Messrs Lahoud, Hoss and Berri — giving a warmer reception than the one offered to Mr. Chrétien. We could, if needed, give similar examples from each of Mr. Chrétien's meetings with his counterparts in each of the countries visited. Not only did the stories of many reporters not reflect in any way the exchange between Mr. Chrétien and his counterparts, they were also silent on events that could have contradicted their prejudices.

• (2020)

One example would be the welcome given to him in Lebanon by the Lebanese-Canadian community, close to 1,000 of whom attended the reception in his honour organized by our ambassador to Lebanon, His Excellency Mr. Haig Sarafian.

Still more significant, when the Prime Minister actually turned a new page in history, it passed unseen in the Canadian media. To wit: Mr. Chrétien is the first foreign head of government to visit Israeli's Arab community since the creation of the State of Israel more than 50 years ago. According to the leaders of Israel's Arab community, no other head of government has ever done that before.

It is close to impossible to describe the emotion and the pride of Israel's Arab community to receive such recognition, from a G-7 leader, after a half century of relative obscurity.

Almost 20 per cent of the Israeli population is Arab. It is concentrated in Galilee, particularly in Nazareth, half-Christian half-Muslim. It is the largest Arab city in Israel, a kind of national, cultural and patriotic capital for Arab-Israelis. Mr. Chrétien, accompanied by Shimon Peres, visited Nazareth's St. Joseph Seminary and High School, a school attended by Arab students of all faiths, that, for a dozen years, has maintained a program of dialogue with the Hebrew University High School of Jerusalem, Lyada.

It was a defining moment of the trip, one in which the Prime Minister spoke of the Canadian values of tolerance and multiculturalism, while praising the Arab-Israeli community.

[Translation]

On a personal note, I want to say that I was born in Haifa. This trip gave me the opportunity to return for the first time — a moment of great emotion — to the country where I was born. I saw the house where I was born. I had not seen it for more than half a century. Being there, with my colleagues and the Prime Minister of Canada, to salute this community, which has remained faithful to its cultural and patriotic values, was a moment I will always cherish.



In October last, during the visit to Ottawa of Father Émile Shafouni, or Abouna Émile as they call him down there, and one of his assistants, Mrs. Soad Haddad, who dedicates her life to her church and her community, the Prime Minister had expressed the wish to go to Nazareth to visit their school. He did not want to go there to meet the administration but to see the students of this school and Jewish students of Jerusalem. He spoke to them. In so doing, the Prime Minister made history. I saw then that the Prime Minister had kept his promise. There were tears in my eyes when I witnessed that moment, which I will always remember and cherish.

[English]

What about those statements that certain reporters branded as gaffes?

The first case was the Prime Minister's error in not visiting East Jerusalem. How did the story arise? A few Canadian journalists went to see the PLO official responsible for the Jerusalem question, Faisal Husseini, and asked him about the failure to visit East Jerusalem. He indicated his disappointment. The implication was that foreign leaders regularly accept PLO invitations to visit East Jerusalem and that Chrétien was making an error. The Israelis try to have their officials accompany any foreign leader to East Jerusalem to demonstrate their sovereignty over a unified city. President Clinton cancelled his visit to East Jerusalem when Jerusalem's mayor, Ehud Olmert, insisted on accompanying the president.

One way out is for foreign leaders to make a visit to the holy sites in East Jerusalem, as did Chinese President Jiang Zemin just hours after Mr. Chrétien did, visiting the holy places.

British Prime Minister Tony Blair avoided East Jerusalem after a controversial visit by his Foreign Minister, Robin Cook, to East Jerusalem where he met with a Palestinian legislator.

President Chirac's visit to East Jerusalem led to serious jostling with the Israeli police. Recognizing the role played by Faisal Husseini as the chair of the Palestinian delegation to the multilateral talks, nevertheless, Mr. Chrétien had decided before leaving Ottawa and asked me to lead an official delegation, together with Canada's resident representative to the Palestinians, as well as the Director General of the Middle East, who visited our Department of Foreign Affairs, to meet with Mr. Husseini. The latter assured me of Palestinian appreciation of Canada's diplomatic role on the Palestine question. Mr. Husseini has, after all, visited Ottawa on several occasions and been warmly received by senior officials.

In a nutshell, Robin Cook, the Secretary of the Foreign Office of Great Britain, was thrown all sorts of things, as you remember, when he went to East Jerusalem. The Prime Minister of France also had all sorts of encounters, all sorts of problems. Our Prime Minister had to face only the criticism of the Canadian media.

The second case was the meeting with PLO president Yasir Arafat in Gaza. This time Chrétien was accused of embarrassing us with the Israelis by supporting President Arafat's threat to

declare independence unilaterally. The English language *Jerusalem Post*, owned by Conrad Black, carried the story of the meeting with Arafat with the headline: "Chrétien tells Arafat not to declare independence unilaterally."

The Hebrew-language *Ha'aretz* carried a long story about the meeting with Chrétien, saying that Canada supported a Palestinian state but only through negotiations. Several paragraphs followed on Arafat's appreciation of Canada's role on the refugee question and on developmental and humanitarian aid to the Palestinian people. Neither newspaper said anything about support for a unilateral declaration of independence.

Indeed, the Prime Minister had made this same remark to Arafat in March 1999 in Ottawa, when Arafat was making a tour of world capitals to try to get the stalled negotiations reopened. Arafat had emphasized that Israel was not meeting the deadlines in the Oslo agreements, and Chrétien said he understood that the threat of the declaration of independence was a way of keeping the negotiations moving. There was no uproar in the Canadian press when the same event had happened in Ottawa over a year earlier.

The third case was the Prime Minister's remark in Nazareth about understanding the Israeli claim to the waters of the Sea of Galilee. When asked about where the border should be, the Prime Minister responded that that was a subject for negotiations between Syria and Israel, but that was ignored by most of the Canadian media.

Former Israeli Prime Minister Shimon Peres endorsed Chrétien's statement, and that did appear as clear partisanship on the Prime Minister's part. The issue is a complex one and not as simple as it appeared in either the Prime Minister's remarks or the Canadian Press interpretation. In fact, the conflict between Syria and Israel is more about borders and security than it is about water. The complex negotiations had broken down in Geneva on March 26 during Assad's meeting with President Clinton over this question. From informed press reports from Europe, Israel and the United States, the compromise that had been worked out was that Syria would acknowledge Israel's claim to water rights in the Sea of Galilee but the Syrian border had to be re-established at the June 4, 1967 line on the northeastern shore of the lake, with some kind of joint patrols to offset Syria's concessions on Israeli water rights. Israel was insisting on the border being 100 metres back from the lake. To be sure, many of the area were probably not aware of the details of these failed negotiations. These remarks by Mr. Chrétien were picked up in the Ba'athist party daily in Damascus. The issue is a deeply divisive one in the Israeli cabinet and apparently between President Assad and his foreign minister, but the Prime Minister's remarks were not that far from the failed compromise agreement.

• (2030)

While noting Mr. Chrétien's presence in Nazareth, the Canadian press failed entirely to report that this was the first time ever a foreign political leader had visited Nazareth, the home of Israel's largest Arab community.

The Prime Minister's visit was particularly well received there at a time when tensions have been high between the Muslim and Christian communities in Nazareth. The Prime Minister's calls for tolerance and the need to respect diversity in every society was equally applauded by his audience, including Shimon Peres. Similarly, the Israeli press carried a long story on the influence of Canadian legislation and judicial practice on human rights practices in Israel. Stories about Canadian successes in the Middle East are obviously much less newsworthy than alleged failures.

The most embarrassing story was said to be Prime Minister's agreement with Prime Minister Ehud Barak for Canada to accept 15,000 Palestinian refugees after the final peace agreement between the PLO and Israel. The story came from a senior advisor to Barak in an airplane bringing him back from an urgent meeting with Clinton in Washington on the failed negotiations. The story was denied within hours by Prime Minister Chrétien himself, personally, and subsequently by Barak publicly. The refugee question is one of the most controversial on the peace agenda and one where Canada's neutrality as chair of the multilateral working group on Palestinian refugees is vital.

The Israelis have never been happy with the working group. The story was potentially damaging, particularly in Lebanon where Canada has repeatedly been accused in the press of trying to settle Palestinian refugees without dealing with the Palestinian claim, supported by the United Nations, for a right of return and compensation.

The Israeli press carried a story that a meeting of refugee experts in Ottawa in 1999 did help move ahead on the compensation question. Like the Arafat or Hussein visits to Ottawa, the Ottawa press corps does not seem to be very curious about Canadian Middle East policy, except when there might be an embarrassing story.

Other stories dealt with Mr. Chrétien's failure to criticize the Syrian military presence in Lebanon or the denial of human rights in Syria and Saudi Arabia, but the press could hardly have expected a visiting prime minister on a protocol visit to condemn his hosts directly.

The final story was the alleged misreading of dress customs in Saudi Arabia.

[Translation]

So, honourable senators, that ends the press review. I wish to publicly thank Professor John Sigler, of Carleton University, who is one of the great experts on Middle Eastern affairs. He was a great help to me in refuting these points and in putting things in their proper perspective.

[English]

The visit was long planned before the leadership fight within the Liberal Party that had so exercised the parliamentary press

gallery in the weeks before the visit. The Canadian media even carried stories that the reporting on the Prime Minister in the Middle East might reopen the leadership question.

We have long deplored the relative absence of Canadian media interest in Canadian foreign policy. Now we have a classic example of an Ottawa story, played out in a foreign context where the coverage itself may have been a principal embarrassment.

The most unfortunate conclusion to be drawn from this affair is that Canadians should avoid the Middle East as a subject, as a policy issue, as a human tragedy, because one might get into trouble in doing anything about it or in even talking about it. Mr. Chrétien had the courage to undertake the first visit ever by a Canadian prime minister dedicated to all key Middle East countries. He was warmly received by all his hosts, who were appreciative of Canada's helpful role in this region over the past five decades and Mr. Chrétien's personal dedication to the peace process. That is what leadership in foreign policy is all about.

**Some Hon. Senators:** Hear, hear!

On motion of Senator Prud'homme, debate adjourned.

## FOREIGN AFFAIRS

COMMITTEE AUTHORIZED TO EXAMINE PERFORMANCE REPORT  
OF DEPARTMENT OF FOREIGN AFFAIRS  
AND INTERNATIONAL TRADE

**Hon. Peter A. Stollery**, pursuant to notice of May 4, 2000, moved:

That the Standing Senate Committee on Foreign Affairs be authorized to examine the Performance Report of the Department of Foreign Affairs and International Trade for the period ending March 31, 1999, tabled in the Senate on November 2, 1999 (Sessional Paper No. 2/36-71); and

That the Committee report no later than March 31, 2001.

**Hon. Anne C. Cools:** Honourable senators, Senator Stollery does not want to say anything more because the motion more or less speaks for itself. This motion was developed by Senator Stollery in discussions with myself. I support the wish of Senator Stollery and the Foreign Affairs Committee to examine the performance report.

Senator Stollery and I had agreed that the time for reporting should be August 31 of this year, but in the process of bringing the motion forward, the date became March 31, 2001. It is Senator Stollery's motion and it is not appropriate that he amend his own motion. I, therefore, move that the motion be amended in the last line to read:

That the Committee report no later than August 31, 2000



**The Hon. the Acting Speaker:** Honourable senators, is it your pleasure to adopt the motion, as amended?

**Hon. Senators:** Agreed.

Motion agreed to, as amended.

• (2040)

COMMITTEE AUTHORIZED TO EXAMINE EMERGING  
DEVELOPMENTS IN RUSSIA AND UKRAINE

**Hon. Peter A. Stollery,** pursuant to notice of May 4, 2000, moved:

That the Standing Senate Committee on Foreign Affairs be authorized to examine and report on emerging political, social, economic and security developments in Russia and Ukraine, taking into account Canada's policy and interests in the region, and other related matters; and

That the Committee submit its final report no later than June 15, 2001, and that the Committee retain all powers necessary to publicize the findings of the Committee contained in the final report until June 29, 2001.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to ask Senator Stollery if he could advise the Senate if the record of his committee indicates that the motion was unanimously supported by the membership of the committee?

**Senator Stollery:** Honourable senators, yes. In fact, both parties were involved in writing the motion.

**The Hon. the Acting Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 10, 2000, at 1:30 p.m.;

That, following the deferred division on the amendment to Bill C-2, the Speaker shall interrupt the proceedings to adjourn the Senate;

That should a further division be deferred until 5:30 p.m. tomorrow, the Speaker shall suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, May 10, 2000, at 1:30 p.m.

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CANADA

# Debates of the Senate

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• 36th PARLIAMENT

• VOLUME 138

• NUMBER 54

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OFFICIAL REPORT  
(HANSARD)

Wednesday, May 10, 2000

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER

JUN 20 2000

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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Wednesday, May 10, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### UNITED NATIONS

##### ELECTION OF CANADA TO HUMAN RIGHTS COMMISSION

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, Canada has happily been elected to membership on the United Nations Human Rights Commission. We wish to recognize that election. This, I believe, is the third time that Canada has been elected.

Honourable senators know that the membership of states on the United Nations Human Rights Commission is by election. The commission is composed of member states. In the past, we have had fine representation in the Canadian seat on the Human Rights Commission, including our colleague Senator Andreychuk. Other distinguished Canadians who represented Canada when we were a member of the Human Rights Commission include Ellen Fairclough and Yvon Beaulne, among others.

We wish to congratulate the government, and we wish the representative who will occupy the Canadian seat on the Human Rights Commission our best wishes.

[Translation]

#### CONTRIBUTIONS OF ABORIGINAL PEOPLES

**Hon. Aurélien Gill:** Honourable senators, might I remark, as an aside, that I will in future be bringing to your attention something we do not share often enough: the remarkable contributions of some of my aboriginal compatriots, who could serve as an example to all Canadians, if they were but better known.

Very often, I must admit, our own ignorance of our history leaves us unaware of our value.

• (1340)

Who is familiar with the contributions of Donnacona, the Algonquin Tessouat, the Wendat Kondiaronk, the Ojibway Pontiac, the Shawnee Tecumseh, the Iroquois Ely Parker, the Siksika Crowfoot, and the many others who have played vital roles in our history?

Not to mention aboriginal figures of more recent, even current, history who have so regularly shown the virtues of patience and balance in the course of our difficult relationships.

Last year, Joe Mathias passed away without seeing the culmination of the Nisga'a Treaty. A son of the Squamish nation, he devoted his entire life to promoting negotiation and mutual understanding. He invested greatly in promoting the rights of British Columbia's First Nations. He defended the rights of First Nations, all First Nations. I met him several times during my political battles. I can tell you that what impressed me most about this man, so strongly that I shall never forget it, was his intelligence, the way he expressed himself, his quiet strength, his peaceful resolve, his faith in negotiations, no matter how frustrating.

For 30 years in Canada, we have owed a great debt of gratitude to these leaders of the First Nations, who did everything to keep the debates on an even keel of intelligence and civility.

We do not recognize these contributions enough. Joe Mathias was remarkable among these people. The temptation to give up, to resort to violence and to show intolerance is still there. It is very difficult to be a Native leader in Canada, because it is very difficult to literally sacrifice one's life to a cause that suffers from both ignorance and disinformation. I have always considered Joe Mathias a pillar of patience and hope. With the finalization of the Nisga'a Treaty, I thought it appropriate to officially recognize the contribution of a man of his calibre.

[English]

#### IMPERIAL ORDER OF THE DAUGHTERS OF THE EMPIRE

##### ONE-HUNDREDTH ANNIVERSARY

**Hon. Sharon Carstairs:** Honourable senators, it is my pleasure to rise today to draw to your attention the fact that this year marks the one-hundredth anniversary of the Imperial Order of the Daughters of the Empire. The IODE's mission is to improve the quality of life for children, youth and those in need through education, social service and citizenship programs.

The IODE was founded by a Montreal woman, Margaret Polson Murray, in 1900. Her granddaughter, Margaret Sellers, now lives in Winnipeg. Margaret Polson Murray encouraged the formation of a federation of women to promote patriotism, loyalty and service to others by sending telegrams to the mayors of Canada's major cities urging them to call together the prominent women of their communities.



On January 15, 1900, the first chapter was formed in Fredericton, New Brunswick, where the IODE will be gathering in the first week of June to celebrate. Supplying comforts for empire forces in the Boer War was the reason for the foundation of the IODE.

Through the 1920s, chapters sprung up across Canada, and members helped establish Girl Guide troops and helped greet new immigrants. During the Depression years, chapters opened relief centres and worked with public welfare departments to provide food, clothing and medical care. The IODE was the first organization to send relief, both monetary and material, to Britain when World War II began.

During the 1950s and the 1960s, chapters focused on educational scholarships, training bursaries, and relief throughout Canada and the world. Many of my fellow students received such training bursaries. In the 1970s, the IODE was officially incorporated as a charitable organization, and they have not looked back.

Currently, IODE members across the country raise over \$3 million yearly and reinvest it in Canada's children, families and communities through its charitable programs.

This year, on its one-hundredth anniversary, the IODE has chosen child abuse and neglect as its program. By raising \$200,000, the IODE will create an ongoing grant program that will be open to an individual or group specializing in developing and implementing ways to prevent child abuse and neglect.

Honourable senators, I thank the IODE for its efforts on behalf of the children of this country.

[Translation]

## FRANCO-ONTARIANS

### PROVINCIAL FRENCH LANGUAGE COMPETITIONS

**Hon. Marie-P. Poulin:** Honourable senators, on Friday, I had the pleasure and honour of presiding, in the Senate, over the Concours provincial de français de l'an 2000 organized by the University of Ottawa and Laurentian University. One hundred and fifty young people from all over Ontario sat in our seats. These young people had worked together on essays, reading, dictation and summarizing in this provincial French competition.

They were so proud not only of being recognized, but of being received here. I welcomed them on behalf of Senator Molgat, but

also on your behalf. I think this is a very fine other use of our house.

## WOMEN IN POVERTY

**Hon. Lucie Pépin:** Honourable senators, allow me to draw your attention today to a sad statistic taken from a study recently conducted by the Front d'action populaire en réaménagement urbain. Shawinigan ranks first among the cities in Quebec as having women renters and heads of families with the lowest annual incomes. Cap-de-la-Madeleine and Trois-Rivières were ranked fourth and ninth respectively in this unfortunate list of women in poverty.

In this area, the average annual income for these households is \$16,000. In fact, 67 per cent of women tenants spend more than 25 per cent of their monthly income on housing and 30 per cent spend more than half of their income on housing. This situation for women tenants in the area I represent is not unusual: it reflects the overall picture in Canada.

According to the National Council on Welfare, in 1996, 61 per cent of single mothers under 65 were living in poverty. For mothers under 25, the rate was 91.3 per cent. These figures are alarming.

Poverty is a sad thing, but it is even sadder in the case of single mothers, because it has consequences on children's mental health. I am referring here to a study commissioned by the School Board of the Island of Montreal, which was released at the end of last year and which deals with the mental health of children raised in poor neighbourhoods. That study produced some disturbing findings. Half of the children aged four and five who participated in the study had at least one mental problem. That percentage climbed to 60 per cent for six to eight year olds. The figures for that group are particularly disturbing: one third of children aged six to eight had two mental problems or more and, in the case of those who had a mental problem such as depression or anxiety, the rate was four times higher for children from poor neighbourhoods. Among all the children identified as having a mental problem, close to half, or 45.9 per cent, were living in single-parent families.

Poverty is more than a money issue. It is a condition that jeopardizes the present and the future of the individual and of the family; it is also damaging to the society in which it prevails. To grow up in poverty is to have fewer early and continuing mental and physical learning experiences, to have fewer resources to meet one's most basic physical needs, such as breakfast before school.

In 1989, the House of Commons passed a resolution to eliminate child poverty by the year 2000. We are still far from that objective. Now, over ten years later, child poverty has not only not diminished, it has also reached record levels, and its consequences are dramatic. We must adopt as quickly as possible measures to break the vicious and shameful circle of poverty among children and single-parent families.

[English]

## ROUTINE PROCEEDINGS

### PRIVILEGES, STANDING RULES AND ORDERS

#### DOCUMENT TABLED

**Hon. Jack Austin:** Honourable senators, at the request of the Honourable Senator Cools, and with leave of the Senate pursuant to rule 28(4), I have the honour to table a letter dated Wednesday, December 8, 1999, addressed to me, from the Honourable Senator Pearson, concerning issues relating to *in camera* parliamentary meetings.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

• (1350)

### ADJOURNMENT

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, May 11, 2000, at 1:30 p.m.

Motion agreed to.

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

#### UPDATE "OF LIFE AND DEATH"— NOTICE OF MOTION TO AUTHORIZE SUBCOMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Sharon Carstairs:** Honourable senators, I give notice that on Thursday, May 11, 2000, I will move:

That the Subcommittee to Update "Of Life and Death" have power to sit on Monday, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[Translation]

### TRANSPORT AND COMMUNICATIONS

#### COMMUNICATIONS—NOTICE OF MOTION TO AUTHORIZE SUBCOMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Marie-P. Poulin:** Honourable senators, I give notice that on Thursday next, May 11, 2000, I will move:

That the Subcommittee on Communications have the power to sit on Monday, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

[English]

### AGRICULTURE AND FORESTRY

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Joyce Fairbairn:** Honourable senators, I give notice that on Thursday, May 11, 2000, I will move:

That the Standing Senate Committee on Agriculture and Forestry have power to sit on Monday next, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to introduce to you a distinguished group of visitors in our gallery. It is a group of parliamentary clerks and officials who are participating in the spring session of the Parliamentary Cooperation Seminar. The members of this group are from the British Virgin Islands, India, the United States, Zambia and the Province of Ontario.

On behalf of all honourable senators, I bid you welcome here to the Senate. I hope that your stay with us has been both useful and interesting.

## QUESTION PERIOD

### ORGANIZATION OF AMERICAN STATES

#### RATIFICATION OF INTER-AMERICAN CONVENTION ON HUMAN RIGHTS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, during Senators Statements, we were pleased to welcome the good news that Canada once again will be sitting as a full member of the United Nations Human Rights Commission. Canada serves for the protection and promotion of human rights globally within the UN family, but since Canada became party to and a member state of the Organization of American States under Prime Minister Mulroney in 1990. Canada has not played an integral role in all of the human rights organisms of the OAS for the simple, technical reason that Canada has not ratified the Inter-American Convention on Human Rights.



Could the Leader of the Government in the Senate make inquiries to determine what progress was made at last weekend's meeting of the committee of officials responsible for human rights legislation in Canada that is examining — and has been examining since 1990 — whether Canada should ratify that convention? That would at least let the bureaucracy know that this House of Parliament is interested in seeing Canada able to play a full role within the OAS human rights system, which can only happen if we ratify that convention.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the Honourable Senator Kinsella both for raising this issue and for his statement earlier advising all senators of Canada's, once again, major role at the United Nations with respect to human rights.

In regard to his question on the ratification of the OAS convention, I had hoped my deputy leader might be able to help me with that, but, upon further inquiry, he was not. Therefore, I will ask the minister and provide to the honourable senator, a response to his inquiry.

**Senator Kinsella:** Honourable senators, I thank the government leader for that undertaking. I should like to point out that Canada will be the host country of the meeting of the OAS this June in Windsor, Ontario, I believe. No doubt Canada will be asked by the other member states of the OAS why we are not participating at the level that we could.

#### UNITED NATIONS

ONTARIO—CONDEMNATION BY HUMAN RIGHTS COMMITTEE  
FOR FUNDING RELIGIOUS SCHOOLS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, that brings me to my supplementary question with respect to Canada's participation in the human rights machinery of the United Nations, where we have made significant contributions over the years. Could the Leader of the Government advise this house of the steps that are being taken to ensure that the Government of Ontario will take the necessary steps to ensure that Canada will not continue to sit under a cloud of condemnation by the United Nations Human Rights Committee for violating of a provision of the International Covenant on Civil and Political Rights? As the honourable minister will recall, Canada has been condemned for not complying with one of our human rights treaty obligations because of Ontario's method of funding religious schools. Have there been consultations between the Government of Canada, which represents us internationally, and the Government of Ontario, which does not seem to be taking this condemnation of a human rights violation by Canada at the level of seriousness necessary to overcome the issue, as all would desire?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, obviously the condemnation to which the senator refers was unfortunate. He is quite correct that the response of the Ontario government has perhaps not been as complete as one would wish.

The honourable senator will understand the difficulties constitutionally with respect to the funding of education and the delivery of educational programs, which are clearly in the jurisdictional purview of the Province of Ontario. It goes without saying that the provincial government is well aware, and has been for some time, of the decision and the condemnation of their inaction. Discussions, I am quite convinced, have occurred and are ongoing, although I do not know their current status. Certainly, I will inquire and attempt to bring myself and the honourable senator up to date on any discussions that are taking place.

• (1400)

**Senator Kinsella:** Honourable senators, perhaps in making those inquiries, the honourable senator might wish to remind those with whom he will consult of the stance taken by the Province of Ontario prior to the ratification of that treaty in 1976. In response to a letter from former prime minister Lester B. Pearson inviting the concurrence of all governments across Canada in ratifying those human rights treaties, the Province of Ontario accepted the standard of human rights in the covenant and undertook to follow the steps necessary for Canada to meet its human rights commitment.

**Senator Boudreau:** Honourable senators, that is a useful contribution to my inquiry. I will certainly add that to the material. It will be another situation where we will ask the Province of Ontario to live up to its commitments.

#### NATIONAL DEFENCE

AIRWORTHINESS OF SEA KING HELICOPTERS—  
ARRANGEMENTS FOR FLIGHT BY LEADER OF THE  
GOVERNMENT—REQUEST FOR LOG OF PARTICULAR AIRCRAFT

**Hon. J. Michael Forrestall:** Honourable senators, I have a brief question for the Leader of the Government. It is my understanding that the government leader will be taking a Sea King ride this weekend, probably Saturday. In urging the minister to please stay away from the City of Dartmouth, might I also ask the minister to table a photocopy of his tasked Sea King's flight and maintenance logs for the past two years upon his return to the chamber? Would he also assure us that the Sea King could have completed a full operational mission? A simple yes or no answer would be fine.

**Hon. J. Bernard Boudreau (Leader of the Government):** The honourable senator is correct in that I am seeking to make arrangements to fly aboard a Sea King helicopter on what would be a normal or a simulated rescue mission. I hope to see firsthand the operation of the equipment and the expertise of the crew, and expect that I will be back here next week to report to you.

Honourable senators, I do not know quite what I will be permitted to report on, but I could certainly report in general terms on the flight, if we are able to complete the arrangements for the flight. By the way, those arrangements are not complete at the moment. I may be disappointed, but if such a flight does take place, I will report my experience back to the honourable senator.

**Senator Forrestall:** Would the minister undertake to make a special effort to get the logs or a copy of the logs. They are available through access to information, but I am sure they would give the leader photocopies of the log entries. If what the minister is doing is being done seriously, then let us look seriously at the whole picture. I do pray for sunshine.

**Senator Boudreau:** I will avail myself and review the transcript of our exchange here to determine precisely what the request entails and will take that with me when I go. I will have the information with me when I go, and when I return, hopefully.

## CANADIAN BROADCASTING CORPORATION

### EFFECT OF PROPOSED CUTS

**Hon. J. Michael Forrestall:** Honourable senators, on an entirely different subject matter, my next question for the Leader of the Government has to do with the Canadian Broadcasting Corporation.

We do not mind government wielding a knife, God knows, Dr. Hamm is doing the best he can to get rid of deficits. However, we understand that the CBC is planning to eliminate the newscast, *The Maritimes Tonight* and *First Edition*, not to mention the related jobs.

The provincial legislatures of Newfoundland, Nova Scotia and New Brunswick have all passed resolutions calling upon the government to continue CBC regional supper-hour news in Atlantic Canada. These shows are important to our largely rural audience. They are certainly important to our fishermen and to the people who work in the forest, in other words, to those people living away from the cities.

Has the minister done anything to date to satisfy himself that these cuts are absolutely imperative? Is there room to negotiate? Is there room to save one or two programs? These cuts will make a large hole in the daily lives of three provinces if we are to lose *The Maritimes Tonight* and *First Edition*.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, the honourable senator brings another very important issue to the floor of the Senate. With respect to the proposals that have been given some circulation, there appears to be a rather substantial abandonment of regional service by what was regarded as a national institution at one stage.

The CBC operates now at arm's length from government, and that is a good thing. Most people would agree with that. In fact, the public and others have demanded that our CBC operate at arm's length from government and not take direction in terms of management, programming and so on from government.

Having said that, the people of Canada, through their tax dollars, support that institution quite substantially and do so on the basis that it is a national institution that serves the country as

a whole. In fact, it serves as a very important, uniting feature of this country.

The position of the government will be expressed through Heritage Minister Copps. However, I can say that I share some of the concerns that have been raised by the honourable senator and will make those representations as strongly as I can.

## NATIONAL DEFENCE

### AGREEMENT ON ANTI-BALLISTIC MISSILE DEFENCE SYSTEM WITH UNITED STATES—POSSIBILITY OF SPECIAL CABINET COMMITTEE

**Hon. Douglas Roche:** Honourable senators, my question is for the Leader of the Government in the Senate. The minister will recall that yesterday he undertook to respond to a question that I put to him concerning the article in *The Toronto Star* last week, stating that a special cabinet committee had been struck to examine the controversial issue of whether Canada should join in the proposed U.S. missile defence system.

Is the minister able to tell the Senate today definitively whether there is a special cabinet committee dealing with this subject and, if so, when it will report?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have not had an opportunity to confirm with the appropriate authorities as to whether or not such a committee was formed. I am not aware of any such committee. The most recent information I have is that no request was made of Canada to join in the program and that the issue is not under active consideration.

The only reason I hesitate at all is that I feel that I should confirm that information in an up-to-date way. I was not able to do so yesterday afternoon, and hope to do so as soon as tomorrow.

**Senator Roche:** I understand that the minister has probably many items that he is dealing with, and I respect that.

• (1410)

However, is the minister aware that officials of the United States government are actively exerting pressure on the Departments of Foreign Affairs and National Defence for active consideration?

In the speech I made last night in the Senate, which begins on page 1292 of today's Hansard, I described the consequences of an affirmative decision. They would have a disastrous effect on Canadian foreign policy, thus lending some urgency to this matter.

Will the minister undertake to report to the Senate tomorrow on whether this committee exists, on the manner in which the Government of Canada will proceed to making a decision on this matter of paramount importance, and on the decision that will be made?



**Senator Boudreau:** Honourable senators, I will undertake to have that information for Senator Roche tomorrow. As I have said, to my personal knowledge, no such committee exists and no decisions are either in the process of being considered or have been taken. I will confirm that and report back to the honourable senator tomorrow.

**Hon. Marcel Prud'homme:** Honourable senators, could the minister tell us if peace has been re-established between the Minister of Foreign Affairs and the Minister of National Defence on this issue? I refer to a statement made by Mr. Eggleton, Minister of National Defence, in reply to comments made by the Honourable Lloyd Axworthy on this specific issue.

**Senator Boudreau:** Honourable senators, I am not aware of any discussion having taken place, as I have indicated to the previous questioner. I will attempt to get confirmation.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

**The Hon. the Speaker:** Honourable senators, by order of the Senate, the bells will ring at 3:15 for a vote at 3:30.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like the Table to call item No. 1, Motions, as the first order to be dealt with, and item No. 3, Bills, as the second order to be dealt with.

### SPECIAL SENATE COMMITTEE ON BILL C-20

#### MOTION TO APPOINT—ORDER STANDS

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Robichaud, P.C. (*L'Acadie-Acadia*):

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference;

That, notwithstanding Rule 85 (1)(b), the committee be comprised of fifteen members, including:

Senator Joan Fraser  
 Senator Céline Hervieux-Payette, P.C.  
 Senator Colin Kenny  
 Senator Marie P. Poulin (Charette)  
 Senator George Furey  
 Senator Richard Kroft  
 Senator Thelma Chalifoux  
 Senator Lorna Milne  
 Senator Aurélien Gill;

That four members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, this motions stands adjourned by Senator Cools. She does not wish to speak today. However, if others who wish to, she would have no objection to them doing so at this time.

Order stands.

### BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

#### SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Serge Joyal:** Honourable senators, I should first like to say a very quick word of thanks to the Honourable Senator Michael Pitfield, with whom I share experience in the other place. I am very much indebted to him for his extensive understanding and knowledge of Canadian institutions.

[Translation]

I support the objective of Bill C-20. Four years ago, I supported the government's decision to refer to the Supreme Court the constitutional principles involved in the issue of secession.

When a provincial premier and his ministers vow to ignore the rule of law and the Constitution of the country to achieve secession, it is the responsibility of the federal government to seek an opinion and to establish clearly what the law of the land is, when the sovereignty of the state, the integrity of its territory and the fundamental rights and freedoms of citizens are at issue.

Avoiding discussion of these matters will not make them disappear. On the contrary, as the former Supreme Court judge, Justice Willard Estey, observed:

[English]

First we must remember that the Constitution is the real wall between chaos and civilized progress.

[Translation]

The reason there are legal and constitutional requirements is, first, so that the unity debate will not founder in chaos and anarchy and, second, so that democracy, the only means of guaranteeing the rights and freedoms of Canadians, can be protected.

[English]

Now that the other place has studied this bill and has made some amendments, it is the Senate's responsibility to examine its provisions closely to ensure that the objectives of Bill C-20 will endure and achieve the government's goal to help preserve the unity of the nation and integrity of the country.

Honourable senators, there are five arguments I want to develop at this stage of our study of Bill C-20. The first is that Canada is indivisible. The second is that the Crown has the inescapable duty to protect the sovereignty of the state, the territorial integrity of the country, and the rights and freedoms of its citizens. The third is that the inseparable bond between the Crown or the state and its citizens cannot be severed without the authorization of the whole of Canada. The fourth is that the sovereignty of the state lies in the peoples of Canada, and the Constitution belongs to them. The fifth is that the Senate has the essential duty to protect the regions and the minorities' interests in any process leading to secession.

As we carry out the duty of the Senate to examine Bill C-20, we must guarantee that Bill C-20 is lawful, constitutional, morally sound, and intellectually consistent.

On my first argument that Canada is indivisible, the Canadian Constitution does not contain a formal clause similar to section 1 of the constitution of the French Republic, to the effect that "France is an indivisible republic." Unlike Canada's Constitution, the fundamental laws of many other federations and unitary countries in the world contain express provisions guaranteeing the survival of the state.

We could have entrenched such a provision in the Constitution of Canada in 1982, but we did not. Was it the right decision? Only history will teach us what the wisest approach would have been. However, does the lack of an express provision in the Constitution of Canada similar to article 1 of the French constitution mean that Canada has no rules? Does it mean that we have no principle as a nation and that Canada is nothing more

than a loose association of independent parts only bound together by side or fringe interests? Is Canada as easily dissolved as a country club in which a minority of members threaten to cancel their membership because they are dissatisfied with the service? This is, in fact, the question that many of my colleagues have raised in their interventions.

Honourable senators, if we are to declare that Canada is indivisible, we must be sure we understand why, legally and constitutionally, Canada is indivisible. It is my purpose today to submit to you my conclusions.

My first point is that the silence of the text or the fact that the word "indivisibility" is not printed in the text does not constitute an absence of rules.

• (1420)

Second, the principle of indivisibility was enshrined in our Constitution in 1867. It was preserved and affirmed in the patriation of 1992 and confirmed in the advisory opinion of the secession reference in 1998.

The intentions of the Fathers of Confederation are well expressed in the preamble of the Constitution Act, 1867. Let me remind honourable senators of what the preamble says:

WHEREAS the Provinces of Canada, Nova Scotia and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in principle to that of the United Kingdom;

The reference to the Crown was not made in a casual way. There is profound legal significance in the expression "One Dominion under the Crown...with a Constitution similar in principle to that of the United Kingdom."

Canada, honourable senators, is a constitutional monarchy. What does that mean? In 1867, the Constitution of Canada included all of the principles that lay the foundation for its indivisibility. In its advisory opinion, the Supreme Court noted at paragraph 62 that the principle of democracy "was not explicitly identified in the text of the Constitution Act, 1867 itself...."

The Supreme Court explained this apparent silence in the following way:

To have done so might have appeared redundant, even silly, to the framers....It is evident that our Constitution contemplates that Canada shall be a constitutional democracy....The representative and democratic nature of our political institutions was simply assumed.

Likewise, it was sufficient for the Fathers of Confederation to guarantee the indivisibility of the union by defining the new country as "One Dominion under the Crown...with a Constitution similar in principle to that of the United Kingdom."



Honourable senators, let me borrow the logic used by the Supreme Court of Canada to explain the lack of any reference to democracy in the Constitution Act that gave birth to a new nation called Canada. To have expressed the indivisibility of Canada in a specific article of the Constitution Act, 1867, "might have appeared redundant, even silly, to the framers....It is evident that our Constitution contemplates that Canada shall be..." indivisible. Canada's indivisibility "was simply assumed."

There is evidence supporting my view that Canada's indivisibility was simply assumed, and this is my third point. The Fathers of Confederation did not draft our Constitution in ignorance. When Confederation was being designed in 1865, the United States was emerging from a civil war. In 1861, President Abraham Lincoln interpreted the American Constitution as binding him with the duty to maintain the perpetuity of the American nation. He believed that the absence of express provisions for the dissolution of the union confirmed his view that dissolution was not legally possible. President Lincoln pledged unwavering loyalty to his constitutional duty and noted that he could only fail in his duty if his political masters, the American people, abandoned their sovereignty by actively denying him the resources needed to continue.

President Lincoln outlined his constitutional position in his inaugural speech in 1861. History teaches us that the American people did not abandon their sovereignty and that President Lincoln fulfilled his constitutional obligations.

This dramatic episode in American history could not have escaped the attention of the Fathers of Confederation, who participated in discussions leading to Confederation at the very moment the civil war was drawing to a close. If the Fathers intended Canada to be divisible, such an intention would have been given a more clear expression, given their knowledge of recent American constitutional experience. Instead, because they were witnesses to the American tragedy, they knew that the silence of constitutional drafters results in the undeniable legal presumption of indivisibility.

Honourable senators, let me elaborate the third foundation on which I submit that the Constitution of Canada has always contained a guarantee of indivisibility. Canada's indivisibility met its first test on March 14, 1868, one year after Confederation, when the Assembly of the Province of Nova Scotia passed a resolution asking the Crown to allow Nova Scotia to withdraw from the union. The response given by the representative of the sovereign authority of the day, the Colonial Secretary, the Duke of Buckingham and Chandos, is totally consistent with the principle that the new union was constitutionally indivisible:

I trust that the Assembly and the people of Nova Scotia will not be surprised that the Queen's government feels that they would not be warranted in advising the reversal of a great measure of state...

How does that case translate into the unity debate today? Because the Constitution was silent on the divisibility of Canada, the correct assumption of the legal and political authorities in Ottawa and in London at that time was that Nova Scotia could

not legally secede from Canada in 1868. Nova Scotia was unsuccessful because such a secession would have been a violation of the indivisibility of Canada that was implicitly guaranteed by the text of the Constitution from the very beginning.

My fourth point is essentially based on the fact that "indivisibility" is a synonym for "territorial integrity." Indivisibility, or territorial integrity, is an attribute belonging only to sovereign states. Because Canada is a sovereign state, it has the right to international recognition of its territorial integrity. In order to maintain Canada's status a sovereign state, the Government of Canada has the inescapable duty to act for the preservation of Canada's territory. Failure to do so would be tantamount to inviting other sovereign states to recognize a unilateral declaration of independence. Sovereignty over the territory remains a fundamental responsibility of the Canadian Crown, and its advisors have an obligation to preserve that territorial integrity from any threat, whether internal or external.

My fifth point is that in the two instances of past secession referendum campaigns in 1990 and 1995, Prime Ministers Trudeau and Chrétien clearly stated that the Government of Canada did not have a mandate to preside over the breakup of Canada, either through a popular mandate from Canadian citizens or through the Constitution. Five years ago and twenty years ago, the prime ministers of Canada were right to conclude that no mandate to dismantle Canada has ever existed, either implied or in a written form.

If Canada was indivisible in 1868, in 1980 and in 1995, then Canada remains indivisible today. How is it, then, that in the opinion of some, the principles and rules in which Canada was founded have been altered? Has something changed today?

In my opinion, the constitutional principles that guarantee the indivisibility of Canada were entrenched in the Constitution in 1867 and remain intact today. In fact, they are strengthened by the advisory opinion of the Supreme Court of August, 1998.

My sixth point is that Canada is a sovereign state and is fundamentally entitled to the recognition of its territorial integrity. The right to territorial integrity is embodied in our internal law. It is recognized by the international community in a number of international instruments, such as the Charter of the United Nations, the Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States, and Helsinki Final Act, for example.

Canada is founded to see that its territorial integrity is fully respected by foreign countries, and any debate on a secession issue is an absolutely internal and domestic matter and is recognized as such by the international community. That principle suffers no exception. No province in our country is in a so-called colonial status and no alleged condition of oppression could serve as the basis for meddling in a matter that is totally domestic and internal to Canada. Those six points, in my opinion, form the basis of the conclusion that Canada is indivisible.

• (1430)

Honourable senators, the second general argument that I wish to submit to you is that the Crown has the inescapable duty to maintain unity and protect the territorial integrity of Canada. What is the fundamental constitutional principle involved in any secession issue? In my opinion, the very essence of our Constitution imposes an inescapable duty on the Government of Canada to act for the preservation of the territorial integrity of the country, the maintenance of a state of law and of the continuity of the Constitution. This duty is embodied in the Canadian Crown, whether the Crown is acting on the advice of its federal ministers or of its provincial ministers. No advice from any minister can constitutionally advise Her Majesty's representative, either as the federal Crown or the provincial Crown, to act contrary to that fundamental duty.

Any Canadian governor general or lieutenant-governor, confronted with ministerial advice from a prime minister of Canada or a premier of a province who demands that the Queen's representative carry out blatantly unconstitutional action against the territorial integrity of Canada would have only one constitutional option, namely, to totally disregard such advice.

**The Hon. the Speaker:** Honourable Senator Joyal, I regret that your allotted time has expired. Are you asking for leave to continue?

**Senator Joyal:** Yes.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Joyal:** Thank you.

The Crown's constitutional obligation arises from the reciprocal relationship between the citizen and the Sovereign. While the citizen owes allegiance to the Sovereign, the Sovereign has an equal and opposite obligation to govern and protect the citizen in return. This mutual bond is well established in jurisprudence derived from the common law relating to the Crown.

That is still the state of the law today, as affirmed in the Coronation oath taken by the sovereign, as it relates to Canada.

The relationship of mutual obligation between the citizen and the sovereign or the state has a very profound legal meaning because, essentially, it involves citizenship.

Honourable senators, citizenship is a serious and loyal adherence to the Canadian state in which the sovereignty of the Canadian people is organized. A twin heritage of rights and responsibilities is the inalienable birthright of every Canadian citizen. Between the Canadian state and the citizen there is a profound covenant: Just as the citizen holds loyalty and responsibility to Canada, so does Canada have the inescapable duty to guarantee the rights of every Canadian, to preserve the community, the continuity of the Constitution, and the integrity

of the Canadian territory. Canadian citizenship is the seal on that covenant. The Government of Canada has no prerogative to break the seal. On the contrary, the Government of Canada has no choice but to maintain and defend the sovereignty of the people of Canada and to maintain and defend their individual and collective rights under the Constitution, wherever they choose to live in the Canadian territory.

Honourable senators, citizenship is not a privilege. Citizenship is more than a right. Citizenship is the very expression of the inseparable bond between the state and the individual.

I now come to my third point. The inseparable bond between the state and its citizens cannot be severed without the authorization of the whole of Canada. The decision of the executive government to negotiate the determination of the citizenship rights of Canadians is of the utmost gravity and certainly cannot be triggered by a simple majority in a vote in the House of Commons alone.

**Some Hon. Senators:** Hear, hear!

**Senator Joyal:** By the same logic that holds that citizenship cannot be alienated by the executive government, it follows that no executive government in Canada has ever had the mandate or prerogative to terminate the obligation of the Crown toward the citizens collectively. Such a prerogative could not possibly exist in the Crown because the Crown is the embodiment of the absolute sovereignty of the people of Canada. The Crown derives its legal authority and legitimacy from the fact that it is the repository of the sovereignty of the Canadian people, which the Supreme Court said is given expression in the Constitution. In other words, the executive government has no authority to abrogate the sovereignty of the people of Canada because in doing so, the government would annul the very source of its own authority.

It is wrong, in my opinion, to maintain that the executive government has a prerogative or capacity to negotiate the dismantling of the sovereign will of Canadians to live under the rule of law and to enjoy the protection of their rights and freedoms under the Constitution throughout the whole of the Canadian territory.

As the Supreme Court has said, at paragraph 72 of the ruling in the secession reference:

Simply put, the constitutionalism principle requires that all government action comply with the Constitution....The Constitution binds all governments, both federal and provincial, including the executive branch...They may not transgress its provisions: indeed, their sole claim to exercise lawful authority rests in the powers allocated to them under the Constitution, and can come from no other source.

By that very statement, the court recognized that no executive government can take the initiative of dismantling the principles of federalism, constitutionalism and the rule of law, democracy, and the protection of minority rights, without the clear consent and the concurrence of all the legislative institutions that embody the sovereign will of Canadians.



Honourable senators, the Constitution is the expression of the sovereign will of the people of Canada. There is no such thing as the prerogative vested in the Crown to annul the state. No king ever had the prerogative to terminate the Crown and dismantle the kingdom. He could abdicate, but the Crown would survive him, as would the kingdom. It is wrong, in my opinion, to sustain that the negotiations leading to secession are similar to the negotiations leading to an ordinary constitutional amendment, or negotiations leading to the ratification by Canada of an international treaty. Both of those kinds of negotiations may be entered into by the executive branch as a means of exercising prerogatives arising from the competence of the federal executive under section 91, or for peace, order and good government.

However, a constitutional amendment that would give effect to the secession of a province would be of a totally different nature and effect. It would bring down completely the present equilibrium achieved in the Constitution. It would destroy the fact that our Constitution as a whole is a functional and coherent system. It would wash away the ideals that pervade its provisions. Furthermore, it would even jeopardize the unique form of federal union that we have developed in the last 133 years.

The Crown and its ministers have a constitutional obligation to protect the sovereignty of the people and the integrity of the territory. The sovereign cannot disregard the Constitution. She does not have any prerogative to terminate Canada, and she cannot accept advice to the contrary from her Canadian ministers alone, whether provincial or federal. Instead of a prerogative, the sovereign has an inescapable duty to preserve the Constitution of Canada and the territorial integrity of the country.

Many comments have been made on the prerogative of the executive to initiate negotiations on secession. I sustain that no such prerogative exists for the cabinet of the day to initiate the termination of Canada. An argument has been made that, in Bill C-20, the government is formalizing House of Commons veto over what is ascribed as a totally unfettered executive prerogative. According to that argument, the prerogative upon which the executive relies is only limited by the responsible government convention by which the House of Commons can censor the government for inappropriate use of its prerogative. With respect, I submit that this position is constitutionally untenable.

It is simply not possible to give the House of Commons a statutory veto over the use of a prerogative that does not exist. If the prerogative existed, then the government would not need a bill to subject it to the will of the House of Commons. The House of Commons already has all the means necessary to control the prerogative. The logical conclusion we are forced to draw from that argument is that there is no need for Bill C-20 because the unavoidable result is that Bill C-20 delegates, to the House of Commons, a power to restrain the use of prerogative, a power that the House of Commons already has.

I do not subscribe to that line of reasoning. In my opinion, there is no such thing as a prerogative to commit the executive government to participate in negotiation leading to secession. The Crown could only engage in such negotiations after obtaining a formal mandate from Parliament, but only after the Canadian citizens and the provincial legislatures have formally expressed their authorization.

• (1440)

Honourable senators, my fourth argument is that the authorization to dismantle Canada could only come through the clear expression of the will of a majority of citizens in the five regions of Canada.

[Translation]

It would only be after the people had spoken that the government could, with the provinces, seek Parliament's special approval to negotiate. Such approval could come only through special legislation passed on the advice and with the consent of both the Senate and the House of Commons and introduced to deal specifically with the particular situation giving rise to the request by the government.

To say otherwise is to repudiate the fair position taken by Prime Ministers Trudeau and Chrétien in the past, namely, that they had neither the mandate nor the constitutional authority to break up the country.

Bill C-20 is the means by which Parliament will eliminate for the first time the legal obstruction that has up to now prevented the government from participating in any negotiations on secession. The bill proposes that Parliament eliminate this obstruction without knowing the situation in which the government of the moment will take part in such negotiations.

To obtain the consent of the Senate, the sponsor of the bill is asking a lot. First, he is asking us today to give the House of Commons alone full power to free the Crown of its constitutional obligations in an unknown future and in just as unknown circumstances. Second, he is asking us to trust in a third of Parliament and to leave the Crown and the Senate aside. Third, he is asking us to have faith in the outcome of a vote in the House of Commons, where the decision will be made on the basis of a simple majority of votes. Fourth, he is asking us to have faith in a House in which four of the five parties have held that 50 per cent plus one vote is enough to breakup the country. Fifth, he is asking us to accept that Canada's fate may be decided by a single vote, if the Speaker were to have to vote in the event of a tie vote.

Before agreeing to all that is asked of us, we must assess how the logic underlying these requests fits with the opinion of the court, according to which, and I quote:

Democracy...means more than simple majority rule.

We must resolve all contradiction before we can responsibly give our consent.

In a country where the rule of law prevails, we must, honourable senators, protect the interests of all Canadian citizens in every province and region and ensure the maintenance of constitutional order. It is for this fundamental reason that we need a law in due form, passed on the advice and with the consent of both Houses of Parliament in order to establish these principles. The Crown could never contemplate giving up its inalienable right to protect its citizens without rigorous compliance with the rule of law and the Constitution, which, according to the Supreme Court, is the expression of the sovereignty of the Canadian people.

The purpose of Bill C-20 should be to ensure that the collective interests of the Canadian people, the interests of all regions of Canada, and the interests of individual citizens are protected by the institutions to which this fiduciary responsibility has been given. It is unthinkable that a province could enjoy sovereignty exercised at the expense of the sovereignty of other provinces and regions, or of the sovereignty of the Canadian people as a whole. The sovereignty of Canada and the right to enjoy the benefits to Canada as a whole that flow from constitutional rights and freedoms belong to each Canadian citizen individually.

Before permanently extinguishing the rights and freedoms of individual Canadians anywhere in its territory, the Crown will have to seek the support and approval of all citizens throughout the country.

The Constitution of Canada belongs to each and every one of those citizens.

So held Chief Justice Rinfret of the Supreme Court of Canada in 1950, in *Attorney General of Nova Scotia v. Attorney General of Canada*. I refer to page 34:

The Constitution of Canada does not belong either to Parliament, or to the Legislatures: it belongs to the country and it is there that the citizens of the country will find the protection of the rights to which they are entitled.

In 1992, Prime Minister Chrétien said that the Constitution belonged to the Canadian people and that the Canadian people would have to be consulted before any substantive changes were made to it.

[English]

I quote from *The Vancouver Sun* of October 29, 1992, page A-5:

Chrétien added that all future constitutional proposals will have to be put to the people.

The then leader of the opposition stated:

We've given the Constitution to the people of Canada and that's going to be the test of any change in the future.

[ Senator Joyal ]

[Translation]

Honourable senators, is there any constitutional change more fundamental than the dismantling of a country and the irrevocable extinction of the rights and freedom of its citizens?

The present government, moreover, acknowledged the vital importance of this question, in its Throne Speech of February 27, 1996. In it, the Governor General of Canada set out the priorities of the federal ministers, four months after the last referendum on secession. The Throne Speech made the following commitment, and I quote:

But as long as the prospect of another Quebec referendum exists, the Government will exercise its responsibility to ensure that the debate is conducted with all the facts on the table, that the rules of the process are fair, that the consequences are clear, and that Canadians, no matter where they live, will have their say in the future of their country.

Bill C-20 is the means by which the Government of Canada is following up on that commitment. If it is to be fully respected, the measure must ensure that the will of Canadians in all regions is fully expressed, and not through the imperfect means of a simple majority vote in the House of Commons, in which the principle of simple representation by population heavily marginalizes the less populated provinces and regions of the country.

Moreover, the simple majority rule does not take into account the rights of linguistic minorities. It does not fully recognize these rights and it does not fully recognize aboriginal ancestral and treaty rights. It is these people, who are in a vulnerable position to negotiate, who would pay the price of secession.

In its opinion, the Supreme Court refers to a majority among all Canadians. In a constitutional federal system, the sovereign will of the Canadian people should not be dependent on a simple majority of a population concentrated in one or two regions. This is the reason why Canada became a federation instead of a unitary state. Senators from Atlantic and Western Canada will have to think about their fiduciary responsibility to ensure that their regions are heard in the institutions designed to express the sovereign will of the populations they represent.

The idea that a simple majority from Central Canada, representing only a fraction of the Canadian population, could dictate negotiations on the breakup of our country, at the expense, for example, of the Maritime and Western provinces, is in direct opposition to the federal principle underlying the fundamental condition whereby the three founding colonies accepted to form a single state under the Crown.

I believe that Bill C-20 is a sincere attempt to promote Canadian unity. Is it not ironical, therefore, that it attempts to do so by violating the very condition that made Quebec delegates to the debate on Confederation agree to take part in the union: the permanent embodiment of the federal principle in Parliament based on an effective Senate which reflects regional equality and which has real power to protect the interests of Quebec and its minorities, something an elected house could not guarantee, in accordance with the principle of representation by population.



[English]

• (1450)

To quote Ridges' *Constitutional Law of England*:

...while Parliament alone is the legal sovereign, the electorate is the political sovereign.

[Translation]

Only the Canadian people can, by expressing its sovereign will through a national referendum supported by the majority of votes in each of the regions of Canada and by its representatives in both Houses of its Parliament, allow the Crown to give up its inalienable duty to preserve Canada, to ensure that it can legally prevent the dismantling of the country and the abolition of the sovereignty of its people.

In my opinion, the best way to ensure the indivisibility of Canada is to guarantee the sovereignty of the people of the Canadian federation by ensuring that its sovereign will must be expressed at each decisive stage of any process liable to lead to the secession of a part of its sovereign territory. Each stage of the process, the first of these being the decision to enter into negotiations, involves the risk that a decision may have an irreversible impact on the people's sovereignty.

The solution which consists in protecting the indivisibility of Canada cannot be implemented except by the expression of the sovereign will of the Canadian people, through a national referendum and subsequently the most stringent adherence to the federal principle, that is, the right of every region to make its voice heard in one of the two Houses of the Canadian Parliament, which will decide the future of this country's sovereignty.

As the Supreme Court rightly stated, the Parliament of Canada, with the legislative assemblies of the provinces, constitutes the only legal authority by which the Crown could be released from its inalienable duty to ensure the permanence of the Constitution. It is the only entity that may authorize the Crown to abolish forever the rights and freedoms of the people of Canada, once the population of Canada has clearly expressed its desire to no longer be united within a single state.

[English]

No more, one under one dominion.

[Translation]

This is where the indivisibility of the Canadian federation lies.

[English]

Honourable senators, I arrive at the fifth argument. The Senate embodies the federal principles. It has the essential duty to protect the regions and minority rights in any secession decision leading to secession.

In order for Parliament to bind the Crown, three elements must come together to enact the statute. The first of these is the Crown itself, but only with the advice and consent of the Senate, which embodies the federal principle, and of the House of Commons.

Honourable senators, the Senate is an essential element of that group of three. The Senate is in fact the only perpetual element. At least every five years, seats in the House of Commons are vacated for a general election. The Crown's ministers may come and go. Some governments have endured for as little as four or five months, but the Senate membership is much more constant. Our turnover is much more gradual, approximately three out of four times slower than the five-year maximum of the House of Commons. Our membership is subject to a progressive renewal on a regular basis as a few seats at a time become vacant and new senators are summoned to fill them. The Senate is the institutional memory of Parliament and the embodiment of the federal principle designed to protect regional and minority interests against a simple majority rule in the House of Commons, which is most of the time drawn from Central Canada with a minority of the national vote in the general election.

It is because of the federal nature of Canada that the House of Commons was not made sole and supreme. The House of Commons has never had the capacity by itself to place any legal bond on the Crown. Ultimately, the House of Commons can control the advice that is given to the Crown, but the House of Commons alone cannot vary the extent of the Crown's authority that is subject to that ministerial advice.

Honourable senators, Bill C-20 provides that at some future time, a legal bond could be placed on the Crown by a simple, unqualified majority in the House of Commons. However, no precedent exists for such a practice. I submit that the Constitution does not allow the House of Commons alone to bind, in the future, the Crown in relation to its inescapable duty to maintain the territorial integrity of Canada and the protection of the fundamental rights of its citizens.

Bill C-20 is proposed legislation leading to a determination whether a future referendum process results in a clear expression of a will to secede by a clear majority of the Canadian citizens of a province. Under Bill C-20, the determination of the clarity of the process will lead to one of only two possible results.

The first possible result is that one or both of the question and the majority is unclear. In such a case, Bill C-20 prohibits negotiations. In other words, the House of Commons, acting alone, will establish a legally binding prohibition on negotiations, which restrains the Crown perpetually — not just the Crown's minister in office on the day of the vote in the House of Commons, but all ministers thereafter.

The other hypothetical result is that both the question and the majority are clear. In such a case, Bill C-20 is silent. Where is the expression of the sovereign will of Canadians throughout the federation? Bill C-20 does not call upon the will of a majority of Canadians in all of the five regions of Canada to express their sovereign will, but the advisory opinion of the Supreme Court quite clearly asserts that such a determination by "political actors" leads to a duty to negotiate. In other words, the House of Commons would act alone to declare that the referendum process is totally free of ambiguity. The House of Commons could make such a declaration on a simple majority vote. That simple majority vote would trigger the duty articulated by the Supreme Court of Canada that would oblige the Government of Canada, however unwilling, to take the irreversible step of entering into negotiations for secession.

Honourable senators, nowhere in its advisory opinion did the Supreme Court exclude the Senate as a political actor to determine the clarity of the question and of the majority.

**Hon. Senators:** Hear, hear!

**Senator Joyal:** Quite the contrary. It underlined its role as the institution at the heart of the compromise that led to the creation of Confederation.

As the consent of the whole of Parliament would be needed to relieve, finally, the Crown of its duty to unity and territorial integrity, the Senate cannot be excluded from Bill C-20. In fact, that very point is already embodied in an act of Parliament. I refer to the Emergencies Act, adopted by Parliament in 1988, which deals with the preservation of the sovereignty, security and territorial integrity of the state. This act recognizes and affirms and the obligations of the Crown. I insist in stating "the obligations of the Crown," not the prerogatives of the Crown. What are they? Let me quote the preamble of the Emergencies Act.

WHEREAS the safety and security of the individual, the protection of the values of the body politic and the preservation of the sovereignty, security and territorial integrity of the state are fundamental obligations of government;

AND WHEREAS the fulfilment of those obligations in Canada may be seriously threatened by a national emergency and, in order to ensure safety and security during such an emergency, the Governor in Council should be authorized, subject to the supervision of Parliament —

— I repeat, "subject to the supervision of Parliament" —

— to take special temporary measures that may not be appropriate in normal times;

Honourable senators, not only does the Emergencies Act recognize the inescapable duty of the Crown to preserve the sovereignty and territorial integrity of Canada, it also provides full equality for the Senate in the process governing the state of emergency at each step where Parliament exercises its supervision responsibility.

Could there be a greater issue related to Canadian sovereignty, the rights of Canadian citizens and the territorial integrity of the state than the authorization given to the executive government to initiate secession? How can we require the concurrence of both Houses for any decision related to emergencies, yet we can part with the Senate when we are to decide the very future of the sovereignty of the whole Canadian people and the obliteration of the fundamental rights and freedoms constitutionally guaranteed to them throughout the Canadian territory?

• (1500)

I contend that if the Senate should be excluded from Bill C-20, it will require formal constitutional amendment as was the case in 1982. In 1982, the Senate was given a real role with real power in relation to constitutional amendments. There is much more than the consultative role proposed in Bill C-20. Senator Ray Perrault explained this important point very well in

his address to the Senate on December 3, 1981, when he was leader of the government in the Senate. I have advised Senator Perrault that I will quote him at length in this connection. He stated at that time:

The Senate will have a key role to play in the amending process. Constitutional amendments can be initiated in this chamber....the consent of the Senate will normally be required for future constitutional amendments.

It is true that the views of Senate will be subject to being overridden by the House of Commons.

However, to override the Senate, the House of Commons will have to pass its resolution again after the expiry of 180 days. It will not be possible for the Senate to be overridden by executive fiat. There must be a second debate in the Commons and the members of the other place will have before them the views of the Senate and the Senate's reasons for refusing to accede to the proposed amendment. In seeking to override the Senate, the Commons will have to justify, before the people of Canada, its reasons for not accepting the views of the Senate.

This procedure safeguards an historic function of the Senate which has been used a countless number of times to the benefit of Senate: the process of sober second thought.

The Senate will have a suspensive veto of six months and, in their seeking to override that veto, the Commons will have to address the concerns raised in this chamber.

Honourable senators, the amending formula adopted in 1982 provided that the Senate could be overridden essentially — and I insist upon this — because the provincial legislatures were recognized as defenders of regional interests in the amending formula. The provinces are empowered to participate directly in the amendment of the Constitution, either through the federal principle of seven provinces representing 50 per cent of the population, or by unanimity of provincial legislatures and the federal Parliament, which is certainly the level of consent needed in the dismantling of Canada.

To exclude the Senate from Bill C-20 is to make Canada more easily divisible. It is certainly not the reason why any of us were summoned to serve in the Senate. It is certainly not the purpose of any senator in this chamber in the consideration of Bill C-20.

Our role as senators is to look beyond the current circumstances, because if this legislation ever becomes operable it will most probably be under a different set of political actors. What we have to do as legislators is make sure that Canada remains indivisible. We need to recognize the distinct role of each House of Parliament entrenched in the Constitution. We could never consent to a secession project unless the sovereign will of the Canadian people formally authorized us to do so. A national referendum requiring majorities in all five regions at each decisive step of any process that could irrevocably extinguish the sovereignty of the people would be the only means by which it would be possible to absolve the Crown of its strict obligation to preserve Canadian sovereignty.

[ Senator Joyal ]



At best, the indivisibility of Canada can only serve the interests of French-speaking Canadians in a world where national boundaries are continuous and where cultural diversity requires strategic alliances among countries in order to counterbalance the overwhelming influence and weight from the culture of our southern neighbour.

[Translation]

Quebec is the centre of French language and culture in Canada and its commitment to maintaining and developing its unique character can only benefit from Canada's integrity, just like aboriginal peoples and official language minorities will always be better protected in a united country governed by a generous and effective Charter of Rights and Freedoms.

[English]

The proposed legislative committee charged by the Senate with the responsibility to examine Bill C-20 must take great care to ensure that Bill C-20 is secure. No government — not the premier of any province nor the Prime Minister of Canada — must be able to take steps to terminate the sovereign will of the people to enjoy common rights and freedoms within a common territory. Only through the full participation and consent of its citizens, expressed directly in a national referendum, through their provincial legislatures and, finally, through the whole of Parliament, can the stewardship of that sovereignty be surrendered.

It is my deep conviction that the committee will need to include formally a set of governing principles to recognize the direct involvement of all our citizens in a national consultation and to guarantee the proper role of Parliament. This is why I will propose at the appropriate time, among other amendments, that clause 1 be amended so that at all times the Government of Canada act with the principle that Canada is one and indivisible.

As the current Prime Minister of Canada has acknowledged, this is the most serious and fundamental subject that our Parliament and legislative assemblies will ever have to decide.

There is no doubt honourable senators will want to reflect in their souls and consciences how their vote on Bill C-20 will help to keep Canada united and indivisible.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I commend Senator Joyal for his clear argumentation in his assessment of Bill C-20 and, in particular, his assessment of the role of Parliament, the Crown and all Canadian citizens in protecting the indivisibility of this country and its territorial integrity, as well as for recognizing the sanctity of its citizenship. I also hope that his remarks will be heard outside this chamber, in particular by the authors of this bill.

I want him to clarify, however, what he meant when he said at the beginning of his remarks that he supported the objective of the bill. I believe those were his words. That, to my mind, is a challenge to the indivisibility theory because it permits, under certain conditions, discussions leading to the division of this country. It certainly challenges its territorial integrity and puts in

jeopardy the citizenship of Canadians who would be affected by the division.

What other objectives of the bill, if there are any, does the honourable senator support?

**Senator Joyal:** My approach in this debate, honourable senators, has not been political. I have listened very carefully to all my colleagues who have stood up in this chamber to speak to Bill C-20. Some of them have made political arguments for or against the bill. I believe that there is a case to be made on political grounds. For one simple reason, I decided to concentrate my intervention at this stage of the debate on the constitutional and legal principles at stake: It is that having been part of the unity debate, to put it in even broader terms, in the last 30 years, it seems to me that there are some aspects of our institution which have never been the object of a clear discussion. In that regard, I would like to use one word, "indivisible." This is a new word in the political vocabulary of the unity debate in Canada. The word does not exist otherwise. To pronounce it would have been to be provocative or to have created some kind of turmoil so dividing that the political situation would have been more difficult to solve.

• (1510)

Honourable senators, as I said to you this afternoon, we now have legislation — we have a bill. This bill contains some elements and some principles that help us understand the fundamental constitutional bases of our country and what principles we can part with, through a simple act of Parliament, through a resolution in the House of Commons, through an act of both Houses, or essentially with the concurrence of the Canadian people. To have avoided opening that debate with you today would be to miss an opportunity.

When I had the privilege to co-chair the special joint committee on the patriation of the Constitution in 1981 and 1982 with the late senator Harry William Hays, I raised the issue that Canada should be one and indivisible and said that this notion should be put in the Constitution. At the time, however, it was as if I had pronounced a word that should not have been pronounced because we were just coming out of the referendum in Quebec. Of course, it would have been seen as a provocation to the secessionist party in Quebec to have had affirmed, immediately after the referendum in 1980, that Canada is one and indivisible, so we avoided it.

In my opinion, honourable senators, we cannot avoid it any longer. We must look at the reality, "en face," once and for all, if we are to discuss the process that would lead to the dismantling of this country.

I feel that Bill C-20 is a good opportunity, if I can speak in lay terms, to put the cards on the table. If we are to vote, we will know exactly what we are voting on, not under some perception that we should not go too far because there will be a reaction in Quebec and the Premier of Quebec will nudge the referendum wheel one more turn and we will go more in that direction. If this Parliament, in doing its inescapable duty, legislates on the process that would lead to the dismantling of the country, then I do not think we can avoid the questions I have raised today.

As I said in my opening remarks, honourable senators, I support the principle and the goal of Bill C-20 because it allows us this debate.

**The Hon. the Speaker:** I know honourable senators wish to prolong the debate, but we have before us an order of the Senate calling for a deferred vote.

**Hon. Lowell Murray:** Honourable senators, I appreciate that the bells will begin ringing in a minute or two. However, perhaps I can put my question to Senator Joyal, and he will have an opportunity to reflect on it and come back to it later.

I congratulate the Honourable Senator Joyal on a most powerful speech. In speaking of the indivisibility of Canada, he quotes the preamble to the 1867 Constitution. In his opinion, did the situation change in any material respect with the adoption of an amending formula in 1982? I ask the question in view of the memorandum that was filed with the Supreme Court of Canada by the Attorney General of Canada. Paragraph 85 states:

[Translation]

While the Constitution of Canada does not expressly provide for secession, the Attorney General of Canada maintains that the Constitution of Canada can accommodate any change to the federation or to its institutional structures, including a change as extraordinary as the secession of a province.

[English]

I could quote also from the oral arguments, adduced by our old friend Mr. Yves Fortier on behalf of the Attorney General, to the effect that the Attorney General does not claim —

[Translation]

...secession cannot be achieved unilaterally.

[English]

I could also quote from pages 5 and 6 of the English version of the Supreme Court advisory opinion on this matter, but I will leave that question with my honourable friend because I see His Honour about to rise.

[Translation]

**The Hon. the Speaker:** I am sorry honourable senators, but I must interrupt the sitting. Following the decision made by the Senate yesterday, the bells will ring for 15 minutes and the vote will take place at 3:30 p.m.

[English]

**Senator Lynch-Staunton:** Honourable senators, is it understood that we will carry on tomorrow at the point we are at now?

[ Senator Joyal ]

**The Hon. the Speaker:** Honourable senators, I have no alternative in that regard. The subject is before us.

Debate suspended.

[Earlier]

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to introduce to you a group in the gallery who must leave immediately.

[Translation]

I wish to draw the honourable senators' attention to the presence in our gallery of the members of the Fédération nationale France-Canada, which is chaired by our colleague the Honourable Marie-P. Poulin. This group is visiting Parliament as part of the France-Canada day organized jointly by the Fédération, the Canada-France Interparliamentary Association, the Embassy of France and the Department of Foreign Affairs. At 3:15 p.m., the group will hold a seminar in room 256. The theme is "The Cultural Diversity of the New Technologies." Welcome to the Senate.

[English]

• (1530)

## CANADA ELECTIONS BILL

### THIRD READING—MOTION IN AMENDMENT NEGATIVED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts;

And on the motion in amendment of the Honourable Senator Oliver, seconded by the Honourable Senator Murray, P.C., that the Bill be not now read a third time but that it be amended, in Clause 350, on page 144, by replacing line 6 with the following:

"(2) Not more than \$4,000 of the total".



**The Hon. the Speaker:** The question before us is the motion in amendment. Is it your pleasure, honourable senators, to adopt the motion in amendment?

Motion in amendment negated on the following division:

## YEAS

## THE HONOURABLE SENATORS

Andreychuk	Kinsella
Atkins	LeBreton
Beaudoin	Lynch-Staunton
Berntson	Murray
Bolduc	Nolin
Buchanan	Prud'homme
Cochrane	Rivest
Cogger	Roberge
Cohen	Roche
DeWare	Rossiter
Di Nino	Simard
Doody	Spivak
Forrestall	St. Germain
Grimard	Stratton
Kelleher	Tkachuk—30

## NAYS

## THE HONOURABLE SENATORS

Adams	Joyal
Austin	Kenny
Bacon	Kirby
Banks	Kolber
Boudreau	Kroft
Bryden	Losier-Cool
Carstairs	Maheu
Chalifoux	Mercier
Christensen	Milne
Cook	Moore
Cools	Pearson
Corbin	Pépin
De Bané	Poulin
Fairbairn	Poy
Ferretti Barth	Robichaud
Finestone	( <i>L'Acadie-Acadia</i> )
Finnerty	Rompkey
Fitzpatrick	Ruck
Fraser	Sibbeston
Furey	Sparrow
Gill	Stollery
Grafstein	Taylor
Graham	Watt
Hays	Wiebe—48
Hervieux-Payette	

## ABSTENTIONS

## THE HONOURABLE SENATORS

Gauthier—1

**Hon. Jean-Robert Gauthier:** Honourable senators, although I would have voted with my colleagues in the Liberal Party, I did not vote because I just arrived from the hospital and did not totally hear the question. I heard only part of it. I guess the rules state that if a senator does not hear the question, that senator cannot vote.

The Senate adjourned until Thursday, May 11, 2000, at 1:30 p.m.





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CANADA

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OFFICIAL REPORT  
(HANSARD)

Thursday, May 11, 2000

—  
THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Thursday, May 11, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

[Translation]

### SENATORS' STATEMENTS

#### FRANCO-ONTARIANS

##### PROVINCIAL FRENCH LANGUAGE COMPETITION

**Hon. Jean-Robert Gauthier:** Honourable senators, last Friday, May 5, the 62nd award ceremony of the Concours provincial de français de l'Ontario took place here in the Senate chamber. There are 100,000 francophone students in Ontario, 26,000 at the secondary level. This important annual event, the French competition, was held in all of the province's secondary schools.

The ceremony was chaired by Senator Marie-Paule Poulin, and the whole event was organized by Yolande Gris  of the French Department at the University of Ottawa, in collaboration with Laurentian University in Sudbury.

The competition was held in this chamber and was attended by a number of students, teachers, and parents. We were also honoured with the presence of the Ambassador of France, Denis Bauchard, as well as a number of other VIPs.

The award ceremonies involved the finalists from among the Grade 12 and Grade 13 students of Ontario's French-language secondary schools. In all, 81 students representing 41 Ontario schools took part and there were 22 winners of the various awards and bursaries.

I should like to congratulate the overall first-place winner for writing, text comprehension, dictation, and pr cis: Ariane S n cal of the  cole secondaire catholique de langue fran aise Cardinal-Carter, in Aurora, Ontario. She ranked second in text study and third in dictation, making her first overall.

I should also like to draw attention to the remarkable performance by the students in the secondary schools in the Eastern Ontario and Ottawa-Carleton regions, who distinguished themselves in these four categories of the competition, including Janie Bertrand of the  cole secondaire de Hawkesbury, who came second in the dictation, first in text study and fourth overall.

Honourable senators, permit me to express my pride today in these young Franco-Ontarian students. What a promising upcoming generation. As *Le Droit* would put it: "It is a fine batch." Clearly this competition encourages and motivates our young people to strive for excellence. With such motivation, we will always be proud to see them take their place in our society.

As the proverb says, to participate is to be a winner. I therefore congratulate all the participants, the organizers and the generous sponsors, who contributed to the success of this great annual provincial competition.

[English]

#### INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

##### PROPOSAL TO ESTABLISH FEDERAL AGENCY TO INVESTIGATE AND ENFORCE WORKPLACE HEALTH AND SAFETY REQUIREMENTS

**Hon. Erminie J. Cohen:** Honourable senators, recently, the International Association of Firefighters, the IAFF, gathered here on the Hill and met with many of us in our offices. In their annual report, they recommended minimizing the risk of occupational health and safety exposures to firefighters and the general public by establishing a federal agency that would have the ability to investigate and enforce workplace health and safety requirements.

• (1340)

The association highlighted their concerns by relating the experience of the 1997 Plastimet recycling plant blaze in Hamilton, Ontario. The fire, which burned for four days and involved 255 firefighters, released dioxins into the air that were more than 60 times higher than acceptable levels. The site remains one of the most toxic in Canada.

The IAFF, who were concerned about the future possibility of more recycling plant blazes, made repeated calls for a public inquiry into the cause of the fire. Despite the fact that crucial information remained unknown, the Ontario government decided there was no need for an investigation.

In the United States, two separate federal agencies combine to provide important protection for workers who are exposed to toxic materials and other workplace hazards. Canada has no comparable authority. The Canadian Centre for Occupational Health and Safety is a well-respected source for information on national health and safety issues, but it lacks the investigative and enforcement powers necessary to protect Canadian workers in general and firefighters in particular.



During their meeting in my office, the suggestion was made that perhaps the solution is to create an independent agency similar to that of the Transportation Safety Board, which reports to Parliament through the president of the Queen's Privy Council. Their mandate is to conduct independent investigations and, in some cases, public inquiries into transportation accidents in order to find the causes and contributing factors.

The board reports publicly on its investigations and findings, and it makes recommendations designed to eliminate or reduce any safety deficiencies. It has the freedom to choose which accidents to investigate and concentrates principally on those accidents which have a reasonable potential to result in safety action or which generate a high degree of public concern. The board's philosophy revolves around "openness, fairness, competence and integrity," and the independence of the board allows it to be fully objective. It is this type of agency that appears to be an appropriate solution to the firefighters' concerns and should be explored more in depth.

Honourable senators, each day firefighters risk their lives to protect our lives and our property, and we, as parliamentarians, have a role to play in ensuring the health and safety of these courageous people.

#### DISCRIMINATION AGAINST ABORIGINAL WOMEN

**Hon. Thelma J. Chalifoux:** Honourable senators, discrimination against women, especially aboriginal women, has once again raised its ugly face. *The Edmonton Journal* of May 4 referred to a statement made by 76-year old Robert from Camrose, Alberta, who said:

Forty years ago, screwing Indians was the thing to do; and further, that the courts should consider the times — squaws were there to be picked up.

It is this disrespectful and hurtful attitude that caused these victims to be a target in the first place. The victims have suffered many years in silence. In a letter to the editor, one of the victims stated:

This whole rape thing has really screwed up my life. It really affected me, my children and relationships. I have lived on the streets, been beaten, robbed and been totally stripped of any self-esteem.

Jack Ramsey would not be able to tolerate all this pain. Will jail for Mr. Ramsey help the victims to regain their self-respect and pride? Maybe.

Honourable senators, aboriginal justice is another option. The victim and the perpetrator face each other in a circle of elders to confront the results of the terrible events that happened in the victims' lives. As Canadians, we must all ask ourselves: What are we doing to address the tragic issues of discrimination and the violence that occurs because of this act?

Almost every aboriginal woman and girl in this country has experienced this disgraceful attitude. This includes myself and

my daughters. Aboriginal women have been crying out for help for far too long. Will Canadians ever listen? This is just another tragic event of bigotry and torture in the lives of my people — the Métis, the Inuit and the First Nations.

**Hon. Senators:** Hear, hear!

[Translation]

#### NATIONAL NURSING WEEK

**Hon. Lucie Pépin:** Honourable senators, we are currently celebrating National Nursing Week, and May 12 is International Nurses Day. The time is therefore appropriate to consider the incredible contribution this profession makes in this country. Nurses are undeniably the support behind the health care system in Canada. Without their knowledge, their support and their professionalism, we would never hope to have the quality and accessibility of health care that we enjoy in Canada.

Last year, at this time, I described how things had gone downhill in the nursing profession in the past ten years. Nurses are poorly paid. Permanent jobs and benefits do not exist. There is no opportunity for professional development. Workloads have increased and working conditions are often dangerous.

This year, our governments have recognized this imminent crisis: We are now facing a shortage of nurses that will get worse if governments do not quickly take action.

Faced with this crisis, governments across the country are organizing recruitment campaigns to attract young people to the nursing profession. We are even recruiting outside the country and offering accelerated courses to doctors who were trained abroad, so that they can work as registered nurses in Canada. These measures will undoubtedly help alleviate the current crisis somewhat.

However, we must tackle the real problem if we want to solve it. We may succeed in attracting recruits through short-term incentives, but how will we keep them, given what we know about the professional life that awaits them?

Let us be clear. It is not a monetary issue, even though adequate salaries, job security and social benefits are also important issues. It is primarily a matter of being able to exercise one's profession in a safe, responsible and compassionate way. Nothing is more demoralizing than to go to work every day knowing that the workload, combined with the limited resources and support, jeopardizes people's well-being.

The nursing profession is doing its best to cope with the crisis. Nurses are in a good position to play a leadership role in the reform of our health care program, and they are prepared to do so. It seems that the governments are turning a deaf ear.

However, it is not up to the nurses to act. This is why I urge the federal and provincial governments to display a political will to work together to reform health care and deal with the imminent crisis in the nursing profession.

Let us never forget that nurses are the backbone of our system. Consequently, we should work to alleviate their burden and save our health care system, since these two elements are integral parts of the same solution.

[English]

### CANADA BOOK DAY

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, last week, to mark Canada Book Day, Senator Fairbairn kindly offered me a book of lovely photographs of her province of Alberta. Her commitment to the literacy movement in Canada is both exemplary and total. I wish to both thank her for her gesture and congratulate for her efforts.

At the time, I did not hide both my appreciation and my embarrassment. Today, in turn, I want to offer Senator Fairbairn a particular literary work that will form the basis of intense discussions this weekend in Quebec City, where Progressive Conservatives from across the country will gather to put together a series of proposals in anticipation of the next federal election. The publication, which, unfortunately for her, is within blue covers, is entitled "Engaging Canadians: Report of the National Policy Advisory Committee of the Progressive Conservative Party of Canada." It is the result of consultations with 20,000 Canadians in over 250 ridings. I have no doubt that she will be inspired by it and that someday we will see some of these proposals within red covers.

• (1350)

## ROUTINE PROCEEDINGS

### BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

#### NOTICE OF MOTION FOR ALLOTMENT OF TIME FOR DEBATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I give notice that, at the next sitting of the Senate, I shall move:

That, pursuant to Rule 39, not more than a further six hours of debate be allocated to dispose of the following motion:

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference:

That, notwithstanding Rule 85 (1)(b), the committee be comprised of fifteen members, including:

Senator Joan Fraser  
Senator Céline Hervieux-Payette, P.C.

[ Senator Pépin ]

Senator Colin Kenny  
Senator Marie P. Poulin (Charette)  
Senator George Furey  
Senator Richard Kroft  
Senator Thelma Chalifoux  
Senator Lorna Milne  
Senator Aurélien Gill:

That four members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee;

That when the debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the motion; and

That any recorded vote or votes on the said question be taken in accordance with the provisions of Rule 39(4).

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I request an opportunity to discuss house business. I refer to my comments of a week ago Wednesday, May 3, wherein I indicated on behalf of the government side that our objective was to have Bill C-2 pass third reading and Bill C-20 pass second reading by the end of this week. I note in reviewing Hansard that Senator Kinsella was prescient. He indicated that sometimes hindsight is better than foresight in these matters and we have not, as honourable senators are aware, reached that stage in our proceedings. I want to see things move along, thus the notice of motion I just gave.

Briefly, honourable senators, I repeat now, hopefully with more resolve, our objective to get these bills through by next week to the stages I indicated.

### FEDERAL LAW-CIVIL LAW HARMONIZATION BILL

#### FIRST READING

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have the honour to present a bill, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and civil law.

Bill read first time.



**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Tuesday, May 16, 2000.

## LEGAL AND CONSTITUTIONAL AFFAIRS

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO STUDY SENTENCING

**Hon. Lorna Milne:** Honourable senators, I give notice that on Tuesday, May 16, 2000, I shall move:

That the Standing Senate Committee on Legal and Constitutional Affairs be authorized to examine issues relating to sentencing in Canada; and

That the Committee report to the Senate no later than June 21, 2001.

## CENSUS RECORDS

### PETITIONS

**Hon. Lorna Milne:** Honourable senators, I have the honour to present six petitions signed by 159 Canadians requesting that the government allow the release to the public, after a reasonable period of time, all census reports starting with the 1906 census.

[Translation]

## CANADIAN BROADCASTING CORPORATION

### NOTICE OF INQUIRY

Leave having been granted to return to Notices of Inquiry:

**Hon. Marie-P. Poulin:** Honourable senators, I give notice that on Tuesday next, May 16, 2000, I will call the attention of the Senate to the Canadian Broadcasting Corporation.

[English]

## QUESTION PERIOD

### DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have delayed answers to questions raised in the Senate by Senator Boduc on May 2, 2000, regarding United States ballistic missiles; and on May 9 and 10, 2000, by Senators Roche, Bolduc and Prud'homme regarding the agreement on anti-ballistic missile defence system with the United States.

## NATIONAL DEFENCE

### PROPOSAL TO DEVELOP BALLISTIC MISSILE DEFENCE SYSTEM WITH UNITED STATES-GOVERNMENT POSITION

*(Response to question raised by Hon. Roch Bolduc on May 2, 2000)*

The Government of Canada has not yet taken a position on the US National Missile Defence (NMD) System. The US itself has not taken the decision to deploy a National Missile Defence System, and the Canadian Government has not been asked to participate. Many questions and issues remain to be resolved before the Government will have sufficient information to determine Canada's view of the proposed system and whether Canada would participate if invited.

The Ministers of National Defence and Foreign Affairs are consulting with the US, other allies and concerned states to ensure that we have an assessment that takes into account Canada's security interests for North America; implications for Canada's position on international arms control regimes; and Canada's involvement in collective security as a member of NATO.

The Government will make its position known at the appropriate time.

### AGREEMENT ON ANTI-BALLISTIC MISSILE DEFENCE SYSTEM WITH UNITED STATES—DECISION-MAKING PROCESS— POSSIBILITY OF SPECIAL CABINET COMMITTEE

*(Response to questions raised by Hon. Douglas Roche, Hon. Roch Bolduc and Hon. Marcel Prud'homme on May 9 and 10, 2000)*

No special Cabinet Committee has been struck to examine the issue of potential Canadian participation in the US National Missile Defence System.

From time to time, it is not unusual for Ministers to get together informally to discuss specific issues. These ad hoc meetings do not constitute cabinet committees.

Regarding the issue of when Canada will take a decision on National Missile System, the Government has not yet taken a position. As the US itself has not taken the decision to proceed, it would be premature for Canada to take a decision on our participation.

National Defence and Foreign Affairs are consulting with the US and our allies to ensure that we have an assessment that takes into account:

- a. Canada's security interests for North America;
- b. Implications for Canada's position on international arms control regimes; and,
- c. Canada's involvement in collective security as a member of NATO.

The Government will make its position known at the appropriate time.

## ORDERS OF THE DAY

### POINT OF ORDER—SPEAKER'S RULING

**The Hon. the Speaker:** Honourable senators, I am prepared to proceed on the point of order that was left in my hands regarding the extension of debate by leave.

On Friday, April 7, just when the Orders of the Day had been called, the Deputy Leader of the Senate rose on a point of order. Senator Hays asked for a ruling as to whether it is permissible to set limits to any request for leave to extend the time allowed a senator for debate. This issue was being raised by the senator as a follow-up to a series of exchanges that had taken place the previous day after Senator Sibbeston had asked for leave to continue his speech on third reading of Bill C-9. According to Senator Hays, it is in the interests of order that a time limit be agreed to when seeking leave to extend the time for debate. In his view, granting leave should not be regarded as open-ended, as an opportunity to continue debate for an unlimited amount of time.

[Translation]

• (1400)

By way of response, Senator Kinsella, the Deputy Leader of the Opposition, agreed with the underlying position that he believed was at the root of the complaint made by Senator Hays. There was, he said, a need to review the rules of debate with respect to the time permitted to individual senators and this task should be undertaken by the Rules Committee. Indeed, several other senators who subsequently participated in the discussion on the point of order also mentioned the possibility of reviewing our rules of debate. Nonetheless, on the point of order raised by Senator Hays, Senator Kinsella argued in effect that the request for leave to suspend the time limits stipulated in the rules cannot logically be qualified by the imposition of another time limit.

As I have already noted, several other senators then intervened to speak to the point of order to express their views. At the end, the Speaker *pro tempore* informed the Senate that we had already

discussed aspects of this question following the comments of the previous day and that we would look at it again in light of the remarks made on the point of order raised by Senator Hays. Since then, I have read the relevant texts of Hansard, I have also examined our rules in consultation with the Speaker *pro tempore* and the Table Officers and I am now prepared to give my ruling.

[English]

During the course of his intervention, Senator Corbin noted that rule 37(4) is categorical in its language. It states that:

...no Senator shall speak for more than fifteen minutes, inclusive of any question or comments...which the Senator may permit in the course of his or her remarks.

This limitation on debate was incorporated into the *Rules of the Senate* in 1991, together with numerous other rules that were drawn up to more clearly structure the Senate's sitting day and to better assure the ability of the government to transact its business. Senator Murray suggested that now, almost 10 years later, there might not be the same need to restrict the time allocated to speeches. Whether or not this is true cannot be decided by me. This is a subject that is best studied by the Rules Committee.

There is no doubt that the current rule is restrictive. With growing frequency, requests are being made to extend the time for debate and the question and comment period that can follow a speech. Only rarely are these requests denied. This practice, in turn, may now be giving rise to a sense of frustration. This appears to be evident based on the objections that have occasionally been raised by some senators who find the process too open-ended. Senator Hays has raised his point of order to suggest a solution to this problem. Until there is a revision of the rules on debate, this solution might be the only effective means to address this situation. The question to be answered first, however, is whether it is procedurally viable.

[Translation]

Senator Kinsella noted that accepting the request for leave means, according to rule 4(6), approval to do something or to proceed in some particular fashion "without a dissenting voice." Normally, what is requested involves the suspension of a rule in whole or in part. This is done routinely every Tuesday, for example, when the Deputy Leader of the Government seeks leave to move without the required notice, a motion respecting the hour the Senate will sit on Wednesday. Instead of meeting at 2:00 p.m. Wednesday, the Senate usually agrees to meet at 1:30 p.m. and to adjourn by 3:30 p.m. in order to allow committees to sit. Leave is also used sometimes to suspend the rule on a deferred vote in order to hold the recorded division at a time more convenient than 5:30 p.m. as specified in rule 67(2). In both cases, leave is used not just to suspend the notice requirement, but to offer something else in place of the relevant rules for the purpose of allowing the Senate to conduct its business more conveniently and effectively.

[ Senator Hays ]



[English]

Based on these examples, I do not find it procedurally objectionable to have a request for leave to suspend the rules limiting the time for debate combined with a proposal to fix the time of the extension. Indeed, following the model of the House of Lords that Senator Kinsella mentioned, it might be useful and advantageous to the senator who is requesting more time to indicate how much time is needed in order to improve the likelihood of a favourable response. Moreover, such an approach would, I think, be in keeping with the intent of rule 3 regarding the suspension of any particular rule. According to this rule, the purpose of my proposed suspension should be "distinctly stated." As much as possible, I have usually permitted an explanation so long as it did not involve any prolonged discussion. This, I think, is a sensible approach that could serve the Senate well until the rules of debate are revised.

Accordingly, it is my ruling that a request to extend time for debate can be qualified with a statement indicating the time of the extension. This statement can be proposed either by the senator making the request or by any other senator so long as any discussion relating to the request for leave is kept very brief.

It is my hope that such a procedure, in addition to the current practice with requests for leave to extend debate, will provide satisfactory alternatives to the Senate until such time as the Rules Committee comes up with a more comprehensive review of our rules of debate.

Honourable senators, I might make one additional comment, which is not part of the ruling. It seems to me that recently some of our very best debates and discussions have come following a speech that has been made. I recall, for example, the very good debate we had on the Nisga'a bill as a result of questions and a different kind of exchange in the Senate. I would hope that we would not restrict ourselves unduly because the purpose, after all, is to encourage debate.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to call Order No. 3 under Government Business, which is the resumption of debate on Bill C-20.

Honourable senators, we are at a suspension of debate that was interrupted when we adjourned by house order yesterday. We were listening to an exchange between Senator Joyal and Senator Murray.

## BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

### SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable

Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Lowell Murray:** Honourable senators, I had and have several questions, all of which bear upon the same issue. I consulted with Senator Joyal, and I think we are agreed that it would be more coherent, efficient and save time if I put my several questions to him at once and he replied to all of them at once so that other senators may have an opportunity to take part and so that the debate may continue.

In doing that, I must draw to the attention of honourable senators an error in the *Debates of the Senate* of yesterday, at page 1320 in both the English and French versions, where I am reported as having said:

...that the Attorney General does not claim secession cannot be achieved unilaterally.

That is the opposite of what the Attorney General says and what her lawyers say, and it is the opposite of what I quoted her and them as having said. For the record, I will read the full declaration of the lawyer for the Attorney General of Canada, Mr. Pierre Bienvenu.

[Translation]

Honourable senators, I quote Mr. Bienvenue, from page 55 of the transcript of the Supreme Court of Canada for February 16, 1998:

I repeat that the Attorney General of Canada does not claim that secession cannot be achieved under the Constitution of Canada. She claims only that it cannot be achieved unilaterally.

[English]

With that out of the way, I should like to put my questions to Senator Joyal. My original question to him was whether his thesis as to the indivisibility of Canada had been changed in any material way by the adoption of amending formulas in 1982. The Attorney General of Canada, in her memoir to the Supreme Court and in the oral arguments put forward by her lawyers, stated that the amendment process was flexible enough to permit even the secession of a province.

• (1410)

In any case, is Senator Joyal's thesis not contradicted by the position taken by the Attorney General of Canada before the court, and by the courts advisory opinion? Has the Attorney General made concessions, which will be with us for all time, that bind her successors? Have we lost what Senator Joyal calls "our indivisibility" by reason of the court's advisory opinion?

Senator Joyal states that it is wrong to sustain that the negotiations leading to secession are similar to the negotiations leading to an ordinary constitutional amendment. It may be wrong, but it seems to be the position of the government and confirmed in the advisory opinion. The government maintained, before the Supreme Court, that there is no right to secession. However, secession could be achieved by constitutional means. Does this distinction have any relevance to Senator Joyal's thesis?

What does Senator Joyal make of the standard response of Mr. Dion, the Minister of Intergovernmental Affairs, to the indivisibility argument, namely, that Canada is held together by an act of will, not by legal coercion?

Finally, one must conclude from Senator Joyal's speech that in his opinion Bill C-20 is unconstitutional on at least several counts. That being the case, how can one or more amendments possibly resolve that problem?

**Hon. Serge Joyal:** Honourable senators, I will try to answer the various issues raised by the Honourable Senator Murray in as brief a manner as possible.

On his first question, concerning the position of the Attorney General of Canada in relation to the pleading of the court in the reference debates in the Supreme Court of Canada, I think one must remember the questions that were asked of the court. The questions were clearly stated, of course, in the reference Order in Council. The first question, which is the one on which I shall concentrate my first answer, states:

Under the Constitution of Canada, can the National Assembly, legislature or government of Quebec effect the secession of Quebec from Canada unilaterally?

We all know that the court said no to that question. The court went on to comment, but did not go as far as negating the very principle on which I based the conclusion that this country is indivisible. I refer to paragraph 53 of the ruling, which I should like to quote because I believe it deals with this point. Paragraph 53 states:

However, we also observed in the *Provincial Judges Reference* that the effect of the preamble to the Constitution Act, 1867 was to incorporate certain constitutional principles by reference, a point made earlier in *Fraser v. Public Service Staff Relations Board*.

In other words, the court recognized in the ruling that the preamble of the Constitution keeps all the strength and meaning in terms of interpreting the Canadian Constitution. In that, the court was not innovating because in 1992, in the case *New Brunswick Broadcasting Co. v. Nova Scotia (Speaker of the House of Assembly)*, Judge McLachlin, at page 378, expanded at length on the importance of the preamble and its meaning. In no way did the ruling diminish the importance of the ruling. That is clear from the interpretation of what the court has had to say in terms of the first question, which is what is the indivisibility of

Canada, or to what extent is the indivisibility of Canada protected in the Canadian Constitution?

On the second point, with regard to what has happened since 1982, I know some other honourable senators share a preoccupation. Senator Beaudoin expressed his concern to me on this matter after my speech. I want to draw the attention of the honourable senator to paragraph 41 of the Canadian Constitution, which states:

An amendment to the Constitution of Canada in relation to the following matters may be made by proclamation issued by Governor General under the Great Seal of Canada only where authorized by resolutions of the Senate and House of Commons and of the legislative assembly of each province.

That is the unanimity clause, in other words. What is the first subject covered by unanimity? It is the office of the Queen, the Governor General, and the Lieutenant-Governor of a province. In other words, in the Constitution of 1982, there were some classes of subjects that could be amended through what I call the "federal principle," 7/50, representing the various regions of the country, and the unanimity one. In other words, there are some elements of the Constitution that seem to be so fundamental to the nature of the country that unanimity is commended. We know what unanimity means. It means the consent of everyone on the same footing, whatever the size of the province and its population. The amending formula is based on the principle of equality of the provinces when unanimity is concerned.

If we are to discuss the office of the Queen, and what is meant by "one Dominion under the Crown," and if we want to effect that very aspect of our Constitution, we must follow the unanimity principle, in other words, involve all the provinces and the Parliament of Canada.

Moreover, honourable senators will remember that four years ago this Parliament adopted legislation to deal with what I call the "federal principle" insofar as the federal government is concerned. The bill, entitled "An Act Respecting Constitutional Amendment," was adopted on February 2, 1996, and it provides that the federal government would not initiate a resolution in the House of Commons unless it has the support of the five regions of Canada. Honourable senators will remember the debate that ensued.

The Government of Canada bound itself a degree further in the amending formula. We all know its impact. I think honourable senators who were present at that time will remember that debate. Furthermore, one must keep in mind that many provinces have given themselves additional needs before expressing their consent to the amending formula. I refer here to British Columbia, Alberta, and Manitoba. I remind the honourable senator that those three provinces have adopted specific legislation binding themselves to a referendum before their governments can give assent to any amendment to the Constitution. I should like to quote the Alberta Constitutional Referendum Act of 1992, which states quite clearly that the Government of Alberta:



...shall order the holding of a referendum before a resolution authorising an amendment to the Constitution of Canada is voted upon by the Legislative Assembly.

The British Columbia government, in 1991, in the act entitled Constitutional Amendment Approval Act, has the same provision, and it states:

The government must not introduce a motion for a resolution of the Legislative Assembly authorising an amendment to the Constitution of Canada unless a referendum has first been conducted under the *Referendum Act* with respect to the subject matter...

The Province of Manitoba has bound its legislature to hold hearings throughout the province before the legislature is so authorized.

In other words, three provinces, under the amending formula of 1982, have gone a step further to recognize the locus of sovereignty, which is the will of the people of the province. We know that in 1992, when the Charlottetown accord was achieved, the Government of Canada and the government of those provinces could have achieved assent without going to a referendum. Certainly, the honourable senator will remember that the government of the day thought it advisable, considering the importance of the question raised, that they would need to go to a referendum.

• (1420)

My point is that on the very interpretation of the preamble of the Constitution of Canada, the ruling recognized the importance and the strength of the preamble. That has not changed. It is not because we had the Constitution patriated that the role of the Crown under the Constitution was diminished.

In the constitutional discussions of 1992, it was mentioned that if we changed anything in relation to that — for instance, if Canada had considered becoming a republic instead of a constitutional monarchy — section 41 provides that this is unanimity. In strict terms, this is what it is, but we know that provinces and federal governments in the past have stated that they do not feel that they are authorized totally, in terms of a democratic mandate, to go over that without consulting and having the mandate of the population.

It is the convention of the government. I have quoted the Prime Minister himself saying that he would want to consult the people of Canada if there were to be a substantial amendment. He would feel obliged to consult the people of Canada because, as he said in 1992, we have given the Constitution to the people of Canada.

Honourable senators, I do not think I said anything yesterday to the effect that the ruling, the practice, the provincial

legislation, or the way we interpret our Constitution has been diminished by what the court has decided and the way we have conducted discussions on constitutional amendments in this country.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I should like to pose a question of the Honourable Senator Joyal. I wish to join with the many others in congratulating and thanking the senator for a first-class intervention.

The honourable senator drew to our attention a provision in the constitution of France that speaks to the indivisibility of the French republic. We share this continent with two other federations, the United States of America and Mexico.

In the advisory opinion of the Supreme Court in the Quebec reference case, the court tells us that they are evaluating the principle of constitutionalism, the principle of federalism, the principle of the rule of law and the principle of democracy. The other two federations also operate on the basis of those same principles.

The decision of the Supreme Court of the United States in the *White* case states that the United States of America is indivisible. I have learned through consultations with parliamentarians in Mexico that it is their understanding that the federation of Mexico is also indivisible, including Chiapas.

Would the honourable senator care to comment on that experience? Did that experience help to confirm the honourable senator's view, which I share, that Canada is indivisible?

**Senator Joyal:** Honourable senators, I thank the Honourable Senator Kinsella for his question.

As honourable senators know, a comparative study of various constitutions in the world teaches us that there are some constitutions, the French and the Portuguese being examples, in which it is affirmed not only that their territory is indivisible but that they cannot entertain an amendment on the very section wherein their indivisibility is recognized and affirmed. That is contained in section 89 of the French constitution and is also contained in the Portuguese constitution. Those are the most telling references that one can have on this matter.

In some other countries, the principle is not affirmed specifically in the text of their constitutions, but through history, in precedents and conventions, which are part of the legislative boundaries in which those questions are raised, it is interpreted as existing, compelling and inextinguishable unless the whole of the population expresses that wish.

In fact, as the honourable senator knows, nothing in the American constitution states that the United States of America is one and indivisible. However, we all know that throughout history the U.S. presidents have interpreted their mandate as to hold to the constitution as long as the people of America have not given their authorization to part with the unity of the country and the territory.

There are different systems to achieve the same result. Common-law countries operate with a certain number of unwritten principles and conventions that are as binding as the clear, written provisions of France and the European countries that inherited the Roman law. They are well codified and written. However, the end result is the same — that is, the locus of sovereignty always lies in the same place, that being in the will of their citizens to maintain the integrity and unity of their country through the fact that they have not authorized their governments to initiate the dismantling of their country.

I shall quote again from paragraph 53 of the Supreme Court of Canada decision:

Given the existence of these underlying constitutional principles, what use may the Court make of them? In the *Provincial Judges Reference*...we cautioned that the recognition of these constitutional principles (the majority opinion referred to them as “organizing principles” and described one of them, judicial independence, as an “unwritten norm”) could not be taken as an invitation to dispense with the written text of the Constitution. On the contrary, we confirmed that there are compelling reasons to insist upon the primacy of our written constitution. A written constitution promotes legal certainty and predictability, and it provides a foundation and a touchstone for the exercise of constitutional judicial review. However, we also observed in the *Provincial Judges Reference* that the effect of the preamble to the *Constitution Act, 1867* was to incorporate certain constitutional principles by reference, a point made earlier in *Fraser v. Public Service Staff Relations Board*...we determined that the preamble “invites the courts to turn those principles into the premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text”.

In other words, when the text does not mention it, one goes to the preamble to fill the gap. Since the concept of indivisibility is not clearly written in the Constitution, we must go to the preamble to see where in the preamble, and in the four underlying constitutional principles that the court has identified, and which the honourable senator has expressed, indivisibility is enshrined. That is the contention I have been making and that the court has confirmed in its ruling of August 28, 1998.

**Hon. Anne C. Cools:** Might I ask the Honourable Senator Joyal for a clarification on that same point?

**Senator Kinsella:** Please go ahead.

**Senator Cools:** I should like to thank Senator Joyal for his excellent speech yesterday.

Senator Joyal just read from the secession reference at paragraph 53, which states:

In the *Provincial Judges Reference*...we determined that the preamble “invites the courts to turn those principles into the

premises of a constitutional argument that culminates in the filling of gaps in the express terms of the constitutional text.”

I question that, honourable senators, because I do not believe that the courts have any authority to fill in gaps in express enactments.

• (1430)

It is my understanding that it is that same statement or paragraph which Senator Joyal just read that the court relied upon to determine that the federal government has a legal obligation to negotiate secession. In other words, it is upon that particular preamble that the court insists it has a right to create a binding legal obligation upon the federal government. It is a mystery to me that no government of Canada, no prime minister until now, and certainly none of us here, ever knew that the Government of Canada not only had a binding obligation to negotiate secession but had a prerogative to do so.

Could Senator Joyal clarify that? The court uses it for the exact opposite of the position he is adopting. He is saying that the indivisibility of Canada is inherent in that preamble. I agree with him. I also believe that the indivisibility of Canada is inherent in every single provision. The point is that the court used that preamble to come to the opposite conclusion of the honourable senator's conclusion, so he is not consonant with and agreeing with the court as much as it appears. To confirm what I am saying, I go to paragraph 148 of the judgment, where the court states:

A superficial reading of selected provisions of the written constitutional enactment...may be misleading.

Could the honourable senator clarify this contradiction for us? I think a lot of people here are depending on those of us who have seriously studied the matter. There is absolutely no provision or any written or unwritten principle anywhere that imposes any obligation or any prerogative whatsoever on the Government of Canada to negotiate any secession.

**Senator Joyal:** Honourable senators, Honourable Senator Cools raises an important question: How can we reconcile the principles that the court has been identifying and that the honourable senator has quoted — federalism, democracy, rule of law, constitutionalism, and protection of minority rights — as being underlying principles of the Constitution, plus the preamble, which they recognize as having some impact on the interpretation of the Constitution, and the fact that, later on, at the very end of their reasoning, they say that, if there is a clear referendum and a clear majority, then the federal government would have a duty to sit and listen to the requests of that province and to come to an agreement in good faith? They put essentially the whole of the exercise on good faith. In other words, they did not commend the result. They said the government would have the duty to sit and negotiate in good faith and try to achieve some kind of agreement based on the recognition of the federal principle and the protection of minority rights, and they list a number of items that should be put on the table in those discussions.



What have they recognized, in fact? They have recognized a principle of democratic expression. They have recognized that, when there is a clear question and a clear majority, without qualifying either of them, a government would have a responsibility to sit and try to find some way of agreeing. It did not order the dismantling of Canada. It did not give to the Government of Canada automatically the mandate to sit and negotiate. The Government of Canada always has the responsibility to uphold the Constitution, which is why I am suggesting to honourable senators that, before the Government of Canada sits and listens to the representatives of the seceding province, they consult the Canadian population in the same way that the province that wants to secede has consulted its own citizens. That is where the sovereignty of the country lies. If the Government of Canada is to negotiate the dismantling of the country, then, in the same way that the premier will seek the mandate from his own citizens, it will have to seek that mandate. That is why I say the previous prime ministers were right in saying, "We have no mandate to do that. Do not knock at my door on Monday morning. I am not there for this. It is not on the agenda of the day."

Any Canadian government, I submit, that wants to involve itself in that kind of initiative will have to consult its population. That is where the principle of indivisibility of our country lies. I submit that if, in the five regions, there is a majority of Canadians saying, "Yes, you can bargain in good faith," then we have taken a step further, which is the expression of the democratic will of Canadians. There is, of course, still a long way to go before we arrive at that ultimate moment when there will be two parties authorized on the same democratic basis to negotiate the dismantling of the country. That is why I feel it is important to reaffirm the indivisibility of the country, and that is why it is important to reaffirm that governments in Canada hold their sovereign power from the will of the Canadian citizens as a whole in the various regions at par, and if they were ever to initiate the dismantling of the country, it could only be because they would be authorized to do that.

I do not think there is anything in the ruling that prevents the Government of Canada from consulting its people, any more than the Government of Canada was told in the ruling that it had to adopt legislation to define clarity. The government felt that it was the proper thing to do, and I think it is the proper thing to do, but only in the context of what the honourable senator has alleged is one of the fundamental principles of democracy. Is there a more direct exercise of democracy than a referendum in which the whole of Canada will say to the government, on a clear question, in clear regional majority, "Okay, go ahead"? As I said, there is a long way to go before we arrive there. However, it is important to have those discussions in relation to Bill C-20, because they are part of the reality of Bill C-20.

All of us are trying to understand the implications of Bill C-20. I am sure we are all very preoccupied with this. Many of us have participated in many referendum debates in the last 20 years. I see my colleague Senator Nolin, who referred to it in his speech two weeks ago. We want to be sure that we do the

things that are commended by those principles that hold us together.

Senator Murray asks if the will of Canadians is more important than the letter of the law. I say the letter of the law is essential to have an expression of the will of Canadians. If we do not have rules that are clear, then it is the worst path to very difficult civil situations. We know it. This is a very sensitive issue. If we are to allow people in regions of Canada to part from the country, it can only be because the procedure is clear from the beginning and there is no ambiguity. If Quebecers want to secede one day, they will know it takes two sides to bargain. Anyone who bargains knows that he needs a mandate to go bargaining and, to get that mandate, he needs to consult his members, or the president needs to consult the board of directors, and say, "Give me a mandate." If you do not have a mandate, you are not authorized to do so. That is why I say, if there is any mandate, it is within the hands of Canadians. It is the will of Canadians that ensures that those rules help the whole of the country to sustain the challenge of its unity.

**Senator Murray:** Honourable senators, I do not disagree with the position taken by the Honourable Senator Joyal. I simply say that the advisory opinion of the Supreme Court treats a secession amendment like any other amendment to the Constitution. As a matter of fact, in paragraph 88, the court states:

In Canada, the initiative for constitutional amendment is the responsibility of democratically elected representatives of the participants in Confederation. Those representatives may, of course, take their cue from a referendum, but in legal terms, constitution-making in Canada, as in many countries, is undertaken by the democratically elected representatives of the people.

At another point in the ruling, the court states:

The other provinces and the federal government would have no basis to deny the right of the government of Quebec to pursue secession should a clear majority of the people of Quebec choose that goal, so long as in doing so, Quebec respects the rights of others.

It all suggests to me that the court in no way implies that the procedure would be anything other than the procedure for any constitutional amendment. The federal Crown is obliged to go to the table, as are all the partners, to negotiate the clearly expressed will of the people of Quebec on a clear question.

• (1440)

**Senator Joyal:** The law that frames the exercise of the responsibility of the federal government does not change. The federal government has the inescapable responsibility to hold the constitutional order as long as the government has not received a mandate from the people of Canada to dismantle it. That is the fundamental element of our democracy.

**Senator Murray:** I agree, but the court does not.

**Senator Joyal:** The Government of Canada has never requested the court to pronounce on the secession procedure. Honourable senators will remember that, although the point was raised at that time by many people who appeared before the court, the Government of Canada refused to request any indication from the court as to how the procedure of secession should be framed. The court made a comment to that effect. To me, there is no shortcut to dismantling the country and avoiding — as Justice Estey said — the kind of chaos that surely would happen.

If that were the case, it would be easy, in fact, to go through the process of dismantling of this country. No government of a federal party — I put the Bloc Québécois aside, for obvious reasons — would ever receive the mandate in a general election to dismantle the country. Where do you get the mandate? You get the mandate from the people of Canada. How can we read the judgment in a way that the government would be relieved of the democratic responsibility of obtaining the mandate from the people of Canada? I do not read that in the judgment.

The various provinces and the federal government, as they judge appropriate, can bind themselves a little further before agreeing to some constitutional changes. I have quoted the provincial legislation and the legislation that our Parliament has adopted, Bill C-110, which many senators here have discussed and debated on its implications. As you will remember, the comment was that the Constitution would be stiffer because we would go another step than the amending formula of 7/50.

In other words, if you consider all the aspects, all the steps that have to be taken before the federal government is authorized to sit at the negotiating table, I think we have the capacity to maintain the constitutional order, as long as the people of Canada have not authorized the Government of Canada to alter the process.

**Senator Kinsella:** Honourable senators, I find the arguments developed by Senator Joyal very persuasive. They help me immensely in understanding, as thoroughly as I can, this historically important piece of legislation.

If I understood the honourable senator correctly, at the beginning of his speech yesterday he said that he supports the objectives of the government. An honourable senator asked him about that point and, if I understood what was said, I share with the Honourable Senator Joyal the objectives that he thinks the government has for the bill. I have no difficulty in subscribing to the same objectives.

It is a pity that the government did not consult with the Senate first and have the Senate bring to bear this kind of focused attention. This debate has been one of the better ones in which I have participated. I have learned a great deal as a result of listening to the contributions of all honourable senators. The debate has been at a level that speaks proud of this institution.

These principles are critical. They are about the life and death of Canada. Given that this immensely important information is before us and that the principles are being clarified as each honourable senator brings his or her reflections to the issue, we

then have to deal with what is being suggested within the context of the legislative process.

As I said, unfortunately, the subject matter was not brought to us first. We could have drafted a fine piece of legislation that would speak to all of these principles by building upon principles that speak to the integrity of a country that has been in place for 133 years. We could leave this place knowing the country will be around for another 133 years.

However, we have what we have, honourable senators. My question is based upon the honourable senator's principle of accepting the objective of the government. Might the honourable senator find it meritorious to have this subject matter referred to our Standing Senate Committee on Legal and Constitutional Affairs? That committee could review the subject matter and build a bill upon these principles that we have adduced in our debate. I think it is impossible — there are too many contradictory opposites — to build an improvement on the infrastructure presented to us in Bill C-20.

Would the honourable senator give some reflection to that idea and perhaps comment, either now or later, so we can begin the process of obtaining agreement within the chamber to refer the subject matter of the bill to a committee, in order to present for adoption a piece of legislation that meets these critical cornerstones that are clearly there?

**Senator Joyal:** I thank the honourable senator for his suggestion. I am sure the Leader of the Government in the Senate as well as the Deputy Leader of the Government in the Senate will have heard his comments. There is no doubt that this issue is very important and dear to each one of us.

We have had a lengthy debate here. As one can interpret, every one of us has ample time to speak his or her mind on this matter. This chamber has listened carefully to each one of the speeches that has been made. The government and the Leader of the Government in the Senate can take the suggestion of the Honourable Senator Kinsella under advisement and we can discuss it further.

We have an immense opportunity in that we in this chamber have the privilege of speaking our minds in detail and thereby profiting from the exchanges during debate. There are advantages to following the course we have followed thus far. It is a free, open and totally credible process so far. I am most indebted to my colleagues for giving me the time to speak my mind. I know the government has had an agenda and it is very legitimate, but on the other hand, the government must recognize the primary and fundamental importance of this issue. I am sure the Leader of the Government in the Senate will want to reflect on that suggestion.

On the other hand, the bill is here before us. It has been debated and amended in the other place. There are other senators who have concerns. The aboriginal senators have spoken to their concerns. My colleague from Ontario, Senator Gauthier, has expressed his own preoccupations. The debate is taking place with all of us participating.



It is not that I do not like the Standing Senate Committee on Legal and Constitutional Affairs. I see my colleagues, Senator Beaudoin, Senator Milne, who is the very able Chair, Senator Cools and all my other colleagues, always in attendance, and I think there is merit in sharing what we are doing here today, as we have been doing in the last few months. I feel each one of us has to listen to the various arguments.

The piece of legislation has been amended. It has some important elements. Each one of us might have a different opinion on it. On the whole, it is an exercise that tries to frame those fundamental objectives we want expressed in a piece of legislation that deals with the very future of our country.

[Translation]

• (1450)

**Hon. Gérard-A. Beaudoin:** I thank Honourable Senator Joyal for his remarkable contribution to this debate. We must keep in mind that there were three questions submitted to the Supreme Court, and that there was a deliberate choice not to ask what amending formula would be applicable if negotiation were to take place.

This controversial question will have to be revisited. Honourable senators, some feel there must be unanimity, while others uphold the 7/50 formula, but the Supreme Court did not give an opinion on this, which is a pity.

I have always said that the referendum is not part of the amending formula. There is absolutely nothing to prevent the federal government from consulting the Canadian public. I imagine that if anything is important enough to warrant a national referendum, this is. I agree with the honourable senator on this point.

Provincial statutes say that a constitutional amendment is not to be ratified without a prior referendum. We must bear in mind that this is not part of the amending formula. If this were ever disregarded, I am not sure that it would cancel the amendment.

Is it the honourable senator's conclusion that the principle of indivisibility includes a prior referendum, of necessity? It seems to me that this is what he is saying. I can scarcely imagine how there could be negotiation without a referendum, mind you. Does the honourable senator agree with this assertion?

**Senator Joyal:** Honourable senators, I maintain that the principle of indivisibility is entrenched in the Constitution and that it is "underlined," to use the terminology of the Supreme Court in its opinion. We need to state this clearly, because it is the very foundation of the role of the constitutional monarchy. It

has a vital link to the political and constitutional structure of our state. If we want to take action that would have the effect of negating that principle, we must return to the constitutive source of sovereignty, which is the Canadian population.

Consequently, we cannot come to any other conclusion than that one, because if we challenge the very existence of the nation, then the nation must have a say. This is why, in my speech, yesterday, I discussed the notion of citizenship, since this is where individual rights and freedoms ultimately lie. If we were to fundamentally challenge the rights and freedoms of individuals, it would be because the whole population had agreed that some of these liberties could be extinguished over part of Canada. The two go hand in hand in a democratic system, based on the principles that the Supreme Court itself recognized as being present in our constitutional structure.

**Senator Beaudoin:** In other words, this would be implicit in Canada, while it is explicit in France, it is in the text. In the United States, the Supreme Court stated that the federative union was indissoluble. Therefore, the honourable senator is of the opinion this could not be achieved here, because there is an implicit constitutional obligation?

**Senator Joyal:** Precisely.

**Hon. Roch Bolduc:** In saying this, is the honourable senator aware that he is talking about the post-1982 Constitution, after the two amending formulas: one requiring unanimity for specific situations, and the other one, the so-called 7/50 formula to, for example, create a province. Would these, in his opinion, be convincing arguments to give the legislatures the power to negotiate?

**Senator Joyal:** I cannot be totally affirmative, because even if the legislatures have full authority under the amending formula, the court specifically recognized that where the Constitution is silent, one's interpretation had to be based on the underlying principles of the Canadian constitutional structure.

The court admitted that democracy, for example, is not recognized in the Canadian constitutional context but is binding on the governments; likewise, the principle of indivisibility, which is enshrined in the existence of a constitutional monarchy, must serve as the basis and reference of the decision as to whether we can dismantle the country without asking the constitutive authority itself for leave to do so.

**Senator Bolduc:** In the Constitution, following the amendments to the Constitution Act, 1982, the monarchy can be changed through a constitutional amendment, provided there is unanimous consent to do so. What is stronger than that, if we can become a republic through a constitutional amendment voted by the legislatures?

**Senator Joyal:** Section 41.1, which I quoted, clearly states that the office of Governor General and the Lieutenant-Governor can be the object of unanimously approved amendments.

**Senator Prud'homme:** René Lévesque let it go through.

**Senator Joyal:** As I mentioned before, there is not only the text itself, there is also the constitutional practice the court recognized as a binding part of the assumption and application of the principles underlying the Constitution. I said earlier that the Canadian and provincial governments have recognized that a constitutional amendment calls into direct question the sovereignty of the people where it lies, that is, with the people themselves. Some provinces wanted to be formally bound. As the honourable senator said, a law can always be changed, just as there is nothing at this point obliging the Government of Canada to consult the people before making a constitutional amendment. However, the governments have, in the past ten years or at least since 1991, limited their prerogative as recognized in the amending formula. The reason for this is that the decision on a substantial constitutional amendment is basically the exercise of direct democracy by the people. There is therefore in this a basic element we can recognize in the bill assuring us that the principle of indivisibility is fully recognized.

**Senator Bolduc:** In constitutional terms, referendums are not binding on governments.

**Hon. Jean-Claude Rivest:** I find the honourable senator's theory interesting. I think this approach remains theoretical, because the amending formula will never meet the requirements of democracy, which is guaranteed in the Constitution implicitly with what he quoted from the Supreme Court of Canada.

• (1500)

The divisibility of Canada is important and fundamental, of course, in so far as a part of the country could leave. Would Senator Joyal use the same reasoning if it were a question of abolishing fundamental freedoms under the Canadian Charter of Rights and Freedoms, which are as essential as the integrity of Canadian territory? In this regard, if governments decided to abolish fundamental freedoms for all sorts of reasons, what route would the honourable senator take? That of the democracy he requires for the divisibility of Canada or that of the amending formula already provided for since 1982 in the Canadian Constitution? I will listen to the honourable senator's comments, but my answer is the amending formula. Despite all my interest in the debate, I believe that the amending formula disposes of the issues of the divisibility of Canada and abolition.

I give the example of the abolition of fundamental freedoms, because it is an underlying principle essential to the Constitution. This freedom comes to us through the *Magna Carta* incorporated in the preamble to the Constitution. This is the argument being developed with much interest and skill by the honourable senator before this house with respect to the divisibility of Canada, which would, in fact, be implicit and according to which we should proceed by referendum.

**Senator Joyal:** Honourable senators, a few months ago, I read an article written by a colleague whom the honourable senator certainly knows, Professor Frémont, a professor of law at the Université de Montréal. This article appeared a few years ago in a Canadian review specializing in public law. Professor Frémont

does a comparative analysis of the way in which countries with a common law tradition have interpreted fundamental freedoms and the ability of governments to amend these fundamental freedoms. His comparative analysis points up the fact that certain issues are viewed by the courts as "supraconstitutional." They are so basic that the courts have held that governments could not amend or abolish them through the usual procedures. I remember one such case. It involved an election, the result of which was to keep a government in power for more than four or five years. This was a ruling by the Indian courts, which have inherited a British common law system in terms of public administration. In an article, Professor Frémont surveyed these issues. In his view, they go beyond the powers of the government to amend constitutions. I could give the reference to the honourable senator and we could certainly pursue this discussion.

In my opinion, since our Constitution does not cover all the aspects of the essential elements of the political structure and basic freedoms of our country, the court sees in these principles the references allowing it to fill these gaps. I believe that in this respect honourable senators might agree with me.

**Senator Rivest:** I would like to make another comment totally outside the legal context in which the honourable senator set his speech right from the start, and quite appropriately so.

With regard to the principle of indivisibility that was mentioned, if it were to be implicitly recognized politically, what would happen to the sovereignist movement in Quebec? It might still make its wishes known, but this would be illegal or not allowed. Does the honourable senator realize that by limiting the debate — and I do not believe it was his intention — to an essentially legal and constitutional vision, which is necessary as part of the debate, he does not dispose of the issue of the secession of a province? In this case we are dealing with Quebec, which for some time has been a political issue.

**Senator Joyal:** Honourable senators, very briefly, I will remind the honourable senator of what I said yesterday on this. I purposely focussed my remarks solely on the basic constitutional elements so that people know exactly what is involved in such an issue. This does not dispose of the secession issue. My reflections do not lead me to conclude that separation is not possible. All I am saying is that if one revisits, as I suggested to my colleagues, the underlying principles of our nation, these are our reference points. However, the court did say in its opinion that, in our democratic system, a secessionist movement such as the one in Quebec can exist, speak up and initiate a public debate, which must then be held.

[English]

**Hon. Sheila Finestone:** Honourable senators, I would love to be making a speech at this moment, but I must share with you my great pleasure at the privilege of assisting at an intellectual exchange of this quality. The exchange has been quite stunning and certainly very informative. The intent of every participant has been to ensure that the best interests of Canadians are well served.



Notwithstanding my desire to ensure that outcome, I find myself becoming increasingly perplexed as to the process. I am a Quebec woman, very concerned about the future of my province and more particularly concerned about the well-being of the anglophone community throughout Quebec. It is a minority and a provincial consideration. I also have enormous respect for the need to maintain and promote the French language and culture within the context of Canada.

I am listening to this debate. I thought I had an answer, but I became perplexed again. I think and I hope that Canada is indivisible, but in reality, as we look around the world, change does take place. It could take place here. If so, we want it to take place in an atmosphere that is non-confrontational, whatever the outcome may be.

I know that my colleague Senator Joyal has put hours and hours of study into this matter, as have many other senators in this room.

Yes, I like the clarity. I hated the referenda. I loathed the procedure we used in Quebec. I thought there were unfair and uncertain mechanisms used, particularly in the English-speaking community. I do not want that ever to happen again. I want fairness and equity and clarity. I come to my bottom-line question.

This bill is called "clarity." That is good. We should have a clear question; that is right. We should know what the majority should be; that is only normal. The rest of Canada should be involved, if — God forbid — we ever need to consider a different structure in this Canadian geography.

This is my question toward a clear question and an eventual determination of a fair question so that we can see where we must go, if — God forbid again — there is a negotiation. I come to my bottom-line question: Is the argument now both legal and yet very political? If this chamber were to accept an amendment to include the Senate, would that satisfy us for this moment? Or is that not enough?

That is my dilemma. How do I vote? Am I satisfied if we amend this bill to include the Senate?

The honourable senator has said that he has many questions about the content and the procedure and, perhaps, the clarity. What if the Senate were to propose an amendment to include the Senate in the process? I think it should have been there in the first place and I will accept the explanation that it was a technical error.

**Senator Cools:** They forgot!

**Senator Finestone:** Would the honourable senator, in that instance, be prepared to vote for this bill?

**Senator Joyal:** I thank the honourable senator for her remarks. She will remember that the fifth point of my presentation yesterday dealt with the status of the Senate in our constitutional order. I feel that the Senate should be included for fundamental reasons. I stated them yesterday. I believe that the honourable senator has had an opportunity to reflect on them. Essentially, they are linked to the federal nature of our country, which is one of the underlying principles that the Supreme Court has identified as bringing order in the Canadian system of government.

• (1510)

I also stated that there are elements in the maintenance of the unity and integrity of the country that must be clearly stated. In the past, we have omitted discussion on some of those principles, not from any wrong perspective but simply because it did not seem proper to raise them.

The committee that will discuss and debate this legislation will have ample opportunity to reflect, not only on the points that I have proposed, but also on the other points that other senators have raised. Much as I have proposed an interpretation, I am certainly ready to listen to any senators or witnesses or experts that we will have the privilege of hearing during the meetings of the committee. We will have a third reading debate in this house. At the end of that, we will be asked to pronounce on the end result.

At this point in time, however, when asked if I will accept less, when I am asking for more, quite frankly, I do not want to find myself in that funnel. I want to take the opportunity we have to listen to all of those who will participate. I have the greatest respect for my honourable colleagues who will participate at the legislative committee or at the special committee, or at any committee to which this house decides to refer the bill. I will listen to the experts. After the last stage of the debate, I will determine for myself how I will vote. Honourable senators will understand that at this point in time, while we are at the very important beginning of enlightening ourselves and one another, it is premature to conclude finally the implications of this bill.

**The Hon. the Speaker:** We are still at the stage of the speech by the Honourable Senator Joyal and questions and comments following. Are there any further comments or questions?

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, I have listened to, studied, and reread the speech by Senator Joyal. It often occurs in the House of Commons that decisions are reached prematurely. How could the honourable senator interpret the government's decision to announce to us that as soon as this bill passes second reading, a committee will be struck comprising 15 senators, 8 of whom are already known and appointed, when we do not yet know how the house will dispose of this bill?

[English]

Is it not prejudging, to say ahead of time, that, after second reading, there will be a committee, therefore making fruitless any debate at this time? Advice has been given that a committee will be struck. This matter was hotly debated in the House of Commons at times, when decisions were taken prejudging the outcome of a vote. I would have imagined that you take these decisions once a vote has been taken, and then you say, "it shall therefore be," et cetera. It is not that I disagree with the special committee, but I find it to be rather unusual. I do not even know how I will vote, so I do not know how someone else can prejudge how I will vote or how others will vote. Is this not something that should trouble senators who want, in all fairness, to say, "I will try to influence my colleagues so that there will not be the necessity of a special committee"?

[Translation]

I should like to have a comment on that, if I may.

[English]

**Senator Joyal:** Honourable senators, when the decision should be taken by this house on the formation of a committee or on what kind of committee it should be is a matter of procedure. As such, it is in the hands of the Speaker to interpret our rules. I shall certainly defer to the learned opinion of the Chair on this.

Do I interpret that decision in one way or the other? I will say to the honourable senator, with whom I had the opportunity to share some years in the other place, that what is important to me as a member of this place is that I speak my mind on what I think are fundamental concerns. I have no doubt that my colleagues who will sit on the committee that will have the responsibility to debate and study this bill in depth, be it a permanent or a special committee, will be totally receptive to allowing any of us to go there and ask our questions and profit from the expertise and knowledge of the various senators and experts who will be invited. The issue of deciding when, whether before or after, is at this point in time in the hands of those in this room whom we trust to be responsible for those decisions.

To answer my honourable colleague Senator Finestone, at the end of third reading, this house will dispose of the bill in the manner in which it wants to dispose of it. Whatever might happen in between is done according to our rules, our traditions, our practices, and our respective caucuses. Most of us, as the honourable senator will know, participate in caucus where we can voice our private concerns —

**Senator Prud'homme:** Most.

**Senator Joyal:** — in relation to the organization of our own work as a team. Most of us "pour faire droit au statut de l'honorable sénateur."

At this point, I would suggest that we have had the privilege of having a free and open debate on this matter. I am indebted to the

leaders on both sides and to all honourable senators who participate in this discussion.

**Senator Cools:** Honourable senators, I wish to ask Senator Joyal one question.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, may I interrupt the debate? My counterpart, the Deputy Leader of the Opposition, must leave, and there are some matters that I should like the Senate to deal with while he is present. Do I have permission?

**Senator Cools:** I will be absolutely happy to defer, Senator Hays.

**Senator Hays:** Thank you, honourable senators.

**The Hon. the Speaker:** Is leave granted for the Honourable Senator Hays to speak now on these other matters?

**Senator Cools:** Absolutely.

**Senator Prud'homme:** If it is not controversial.

**Senator Hays:** You will have to wait and see. It is non-controversial to me.

Debate suspended.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** First, honourable senators, I have had the opportunity to negotiate or discuss further the matter of voting time on the motion that has been put to strike a committee to receive Bill C-20, which was recited in my motion on time allocations. We have agreement, which Senator Kinsella will confirm, I believe, to vote on all matters with respect to that motion at 5:30 p.m. on Tuesday next, which means that I do not need Monday for procedural reasons. Accordingly, when I revert to the motion to adjourn, I shall adjourn to Tuesday, not to Monday as I might have otherwise done.

**Hon. Noël Kinsella (Deputy Leader of the Opposition):** Honourable senators, I am able to concur with that agreement.

**Hon. Marcel Prud'homme:** Honourable senators, just a minute. This is a beautiful show of friendship between people, and you talk about "consultation." I asked Honourable Senator Hays if there were any surprises. His Honour has said that all senators are equal. Senator Joyal just hinted at how strongly he debated this issue. He said, "We debated these issues in our caucuses." There are five of us who are not yet organized in a caucus. I do not speak for my colleagues; I speak for myself. We have no caucus. We debate with whoever wants to listen to us. However, we have not been consulted about the possibility of having a vote at 5:30 p.m. on Tuesday.



• (1520)

Senator Hays is a fine gentleman, and I will continue to say that until he feels that I am strangling him. We always say yes to him, but I should like to remind honourable senators that we have not been consulted on this matter. Therefore, we do not see the necessity of sitting on Monday, and we will come back here on Tuesday and vote at 5:30 p.m.

There will be other speakers on this order. I will not object, so honourable senators can relax. However, the same thing always happens. At times, independent senators are consulted, while at other times they are not. I am not asking to be consulted every day on the ordinary business of the house concerning adjournments, and so on. On a question as important as this, I would have appreciated knowing in advance. It is possible that I was told and I do not remember. However, that would be tough for me to admit publicly; or perhaps I was absent when these negotiations took place. If that were the case, then I would be at fault. I repeat again, in these important matters it takes only a minute in that we are only a few feet from each other. I would have appreciated knowing about this.

**Senator Kinsella:** Honourable senators, I confirm the agreement on this side of the chamber. Rule 38 is very clear. It states:

At any time while the Senate is sitting, the Leader of the Government in the Senate or the Deputy Leader of the Government in the Senate may state from his or her place in the Senate, that there is an agreement among the representatives of the parties in the Senate....

I am confirming that agreement, honourable senators.

**The Hon. the Speaker:** Honourable senators, I thank the Honourable Senator Kinsella for having raised this point. However, it does not cover the agreement, which I understand has now been reached, to have a vote on a motion.

I want to make it clear so that on Tuesday there is no disagreement concerning what we are talking about. Are we not talking about the motion that a special committee be appointed?

**Hon. Anne C. Cools:** No.

**Some Hon. Senators:** Yes.

**The Hon. the Speaker:** The motion being discussed states, in part:

That a special committee of the Senate be appointed to consider, after second reading, Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of a Canada....

Honourable senators, is that the motion about which we are talking?

**Senator Cools:** That is the motion.

**The Hon. the Speaker:** Is there agreement, then, that there will be a vote on this motion at 5:30 p.m.?

**Some Hon. Senators:** Agreed.

**Senator Prud'homme:** When will the motion be debated, honourable senators?

**Senator Hays:** Honourable senators, perhaps I could answer by saying that this order will be called today for debate. It will be called every sitting day until Tuesday. I have indicated that I will be proposing a motion, for which leave will be required, that we adjourn until Tuesday at 2 p.m. There will be two more days of debate.

**The Hon. the Speaker:** In order that there will be no misunderstanding, honourable senators, on Tuesday next, at 5:30 p.m., regardless of where we are in the proceedings, I shall rise and call for a vote on this motion.

**Senator Hays:** Agreed.

**The Hon. the Speaker:** Whether or not it has been debated, I shall call for a vote. To be clear, we will have a voice vote. If there is a request for a standing vote, a standing vote will follow, according to our rules. Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

**Senator Prud'homme:** Honourable senators, I see that we have a very fair and prudent Speaker. His Honour sets out exactly what he will do. Therefore, the question will be dealt with on Tuesday. That is not the question to adopt Bill C-20 at second reading but on the motion to strike a committee once Bill C-20 has been disposed of at second reading. Is my understanding correct?

**The Hon. the Speaker:** No. At this point, I have no idea where Bill C-20 will be at that point in time. The agreement being sought now has only to do with the question of establishing the committee. Where Bill C-20 stands, I do not know. I have no means of knowing. All I want to know is what we will do on Tuesday at 5:30 p.m.

**Senator Lynch-Staunton:** We vote against the motion!

**The Hon. the Speaker:** At 5:30 p.m., regardless of where we are on the Order Paper, I shall rise and call for a vote on this motion.

**Senator Hays:** Perhaps as a further clarification, we could set the time of the bell. We shall have the voice vote at 5:30 p.m., as His Honour has indicated, and then a half hour bell and the vote at 6 p.m.

**Hon. Eymard G. Corbin:** Honourable senators, I rise on another point of order on this matter. Are we to presume that before the question is put we will know the names of the other members of the committee, apart from those listed in today's Order Paper?

**Senator Hays:** Honourable senators, the best answer I can give to that question is no. I envisage the way in which the membership of the committee will be determined — because it is not determined in the motion — is in the way provided for in our rules, which is that the Committee of Selection will meet, make a decision and report back to the Senate. I am not sure when that report will be made to the Senate. I am hoping that it will be as soon as possible. That report would then come to the Senate for approval and a vote.

**Senator Prud'homme:** It will be put to the Senate and voted on, but like anything else, it will be debatable.

**Senator Hays:** That is correct.

**The Hon. the Speaker:** Honourable senators, the situation is that if the motion is reached by then, yes, it will be debatable. However, if the motion is not reached by 5:30 p.m., I will not be able to entertain any further discussion. That will be the end of it.

**Hon. Jean-Robert Gauthier:** Honourable senators, I seek clarification. I have been here all afternoon listening to the debate. I heard the Deputy Leader of the Government mention that there will be something else in that motion. As I understood it, he said there will be six days allowed for further debate on Bill C-20. Am I right or am I wrong?

**Senator Hays:** As far as I know, I made no mention of Bill C-20. Any remark I made in the context of the agreement reached between Senator Kinsella and myself was made pursuant to rule 38.

**Hon. Nicholas W. Taylor:** Honourable senators, I should also like to have something clarified. I am not sure if we will be asked to vote on a motion that shows only one side of the appointees to that committee. Are we being asked to appoint a committee for which we know only a portion of the members who will serve on it? Do those names have anything to do with the motion?

**Senator Hays:** The Honourable Senator Taylor has asked two questions. The answer to his first question is yes. Technically, the answer to his second is no. Perhaps I should elaborate.

The motion is to strike a 15-person committee. In accordance with the division of 15-person committees, we have named nine government senators.

• (1530)

We have no names for opposition senators, but I believe they will be put forward at a Committee of Selection meeting. This motion may be defeated, in which case we will not need more names. Nevertheless, if this passes, the Committee of Selection meeting will then determine the balance of membership.

**Senator Taylor:** Honourable senators, I have two points of clarification. I gather that, when we vote on a motion, we know for sure what this side of the house is proposing, but we may not know what the other side of the house is proposing.

That leads to the second point of clarification. I have been studying the rule book, which states that a quorum shall consist of four people. Does that mean that the nine whom we have nominated, if the opposition does not put up anyone and we approve the committee, can have a quorum of four and control the vote? What are we agreeing to here?

**Senator Hays:** Honourable senators, that is a hypothetical question — and many such questions might be put. I do not know how much detail to go into. This has occurred in the Senate before and we have rulings on the issue. Perhaps we could have occasion to go over that. I do not think it is a problem.

Honourable senators, we are now at 3:30 p.m. on what we had hoped would be a short day. All honourable senators can rely on the fact that the Deputy Leader of the Opposition and I have an agreement, and that we have considered most of those items. I am hoping that we can get on to the next matter before he must leave. I would be happy to sit down with the honourable senator after we adjourn in order to explain the situation further.

**Senator Taylor:** Thank you very much. Past experience has always told me that I only got into trouble when someone said, "Don't worry; everything is looked after."

**Senator Nolin:** You were told that before the referendum last time.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, perhaps I can help Senator Taylor and his colleagues. We have not submitted names from this side because we are not in favour of the formation of a special committee. We feel the bill should go before the Standing Senate Committee on Legal and Constitutional Affairs, and I shall make that argument in due course. As a matter of fact, we are soliciting interest from existing members of the Standing Senate Committee on Legal and Constitutional Affairs, on both sides, to see if any members wish to sit on the special committee. Therefore, applications on the other side are more than welcome.

**Senator Cools:** Am I able to apply as well?

**Senator Kinsella:** Absolutely. Send your name in with three references.

**Senator Cools:** I was thinking perhaps there was an opportunity to be on the committee, because there seem to be a few vacancies.

**Senator Lynch-Staunton:** We need a reference from your chairman.

**Senator Prud'homme:** I would be more than happy to discuss this issue with the honourable senator after the sitting today. We may propose the name of Senator Cools to replace someone who has already been announced. To be frank, I do not like to know ahead of time, even before deciding on committees, who will be appointed. I would be more than happy to make a motion eventually, with the honourable senator's name, instead of another senator.



**The Hon. the Speaker:** Honourable senators, we are now getting into the substance of the question and away from the procedural matter that is before us. Let us come back to the procedural matter.

I take it, then, that Honourable Senator Hays will agree to our removing his Notice of Motion of earlier today?

**Senator Hays:** We could do that, or I simply will not move the motion. I had envisaged the latter approach, but if His Honour feels more comfortable with it off the Order Paper that is fine.

**Senator Kinsella:** If I were you I would leave it there.

**Senator Hays:** My preference would be to leave it there.

**The Hon. the Speaker:** Honourable senators, then the understanding is clear that, in regard to this motion to establish the committee, at 5:30 p.m. on Tuesday I will interrupt whatever else is going on and call for a vote on that motion.

**Senator Lynch-Staunton:** A voice vote.

**The Hon. the Speaker:** If a standing vote is requested, is there agreement that it will be a half-hour bell?

**Some Hon. Senators:** Agreed.

**The Hon. the Speaker:** That is the agreement. The house is agreed. We will proceed on that basis.

**Senator Cools:** I thought I understood Senator Hays to ask that it be called at 5:15 p.m. and that the bell would ring for 15 minutes.

**The Hon. the Speaker:** I believe Senator Hays corrected that and said that we will call the vote at 5:30 p.m. If a standing vote is required, there will be a half-hour bell. The house has agreed. That is the understanding.

**Senator Hays:** Honourable senators, I gather that that understanding has the status of a house order.

I should now like to move to another matter of importance. It relates to item No. 4 under Government Business.

## PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

### SECOND READING—ORDER WITHDRAWN

On the Order:

Second reading of Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(i), I move:

That, notwithstanding rule 63(1), the proceedings on Bill C-22, which took place on Tuesday, May 9, 2000, be declared null and void.

We have before us an unprecedented situation, on my inquiry, which is that the text of Bill C-22 that was sent to this place by the other place does not in fact reflect a series of amendments that were made to Bill C-22 in the other place. My information is that they are the amendments that were set out in the second report of the Standing Committee of Finance of the other place. There are several of them. Accordingly, what we have referred to in Item No. 4 is not correct. The error appears to be of a clerical nature, but it is a substantial error. It must be remedied because we are not talking about the same piece of paper in the two Houses in terms of what is described therein, namely, the parchment.

The House of Commons has responded to this by sending to us what I believe is the correct parchment. However, we must dispose of this matter here, in the absence of any other way of dealing with this unprecedented problem.

Honourable senators, this is a matter that I have had an opportunity to discuss with the Deputy Leader of the Opposition. I would propose that we deal with this through unanimous consent. Senator Prud'homme is not listening; nevertheless, we will deal with it by passing a motion that I will now put.

**Hon. Marcel Prud'homme:** Honourable senators, as a word of explanation, what does this imply? I will cooperate on this issue.

**Senator Hays:** I appreciate your agreement to cooperate, Senator Prud'homme.

**Senator Prud'homme:** The difficulty, senator, is that you must realize that senators talk to each other. Some say that I am shy. I do not know exactly what is going on, so I do not like to get up. Sometimes I do know; however, I am concerned about the new senators. When I became a senator seven years ago, I did not dare get up for fear of embarrassing myself.

Will the Deputy Leader of the Government please tell us what this implies so that we are all on an equal footing in understanding the mistake that took place?

**Senator Hays:** Thank you Senator Prud'homme. Before I say anything, though, I wish to point out to honourable senators that I did try to be as precise and as clear as I could in explaining. Nevertheless, let me explain again.

• (15:40)

On Monday of this week, we received Bill C-22, which is Order No. 4 on the Orders of the Day. It was given first reading on Monday.

The parchment did not contain amendments that were made in the Standing Committee on Finance of the other place. They are referred to in the second report of that committee. There are several of them, and they are substantive. The error — and it is a clerical error but it is a substantive clerical error — was discovered. We have now received from the other place another parchment, which is the same bill, Bill C-22, with the corrections made in it.

Honourable senators, we cannot have two Bill C-22s, so after discussion with the Deputy Leader of the Opposition and the Table, we have proposed a solution to this unprecedented situation. The solution is that we give unanimous consent to the motion that I read and that His Honour put. Perhaps His Honour could put it again to ensure that everyone has heard it and understands exactly what we propose.

**The Hon. the Speaker:** Honourable senators, since that order has not yet been called, I do not think as Speaker that I should deal with it. We are still on the previous order, which is the second reading of Bill C-20. I will deal with Bill C-22 when that item is called.

Order withdrawn.

# **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

## SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**The Hon. the Speaker:** Honourable senators, is there any further debate on Bill C-20?

**Hon. Anne C. Cools:** Honourable senators, I thank Senator Hays for that explanation and for that hasty correction.

I had one last question for Senator Joyal, but apparently he is not here. Perhaps someone could move the adjournment.

**The Hon. the Speaker:** Honourable senators, unless another senator wishes to participate in the debate, this will conclude, then, that portion of the questions to Senator Joyal. We now move to further debate.

**Hon. Jeremiah S. Grafstein:** Honourable senators, let me add my congratulations to Senator Joyal on his masterful and comprehensive analysis of this bill, in which I share and I concur. Therefore, I will not attempt to replicate or retrace too extensively his arguments.

The clarity bill, as presently crafted, presents all senators with a most perplexing and painful conundrum. The purpose of the bill, as articulated by its advocates here and in the other place, is to design a constitutionally appropriate legislative mechanism following the constitutional road map as surveyed and opened by the Supreme Court of Canada's advisory opinion. I stress that it is an advisory opinion, not a judgment.

Ostensibly, this bill's rationale is to ensure that any future provincial referendum proposing the breakup of Canada presents a question that is both clear and supported by a significant majority of voters in that province on that question.

How can one not support the objectives of such a measure? Yet, a devil lurks in the details. The drafters of this bill neglected the Senate. The question, therefore, senators must ask is whether a bill, the purpose of which is greater constitutional clarity, is constitutionally effective if, on its face, it fails to meet the express and implied principles of the Constitution. What great danger is let loose in the land if a bill drafted for the sole purpose to comply with constitutional principles itself fails to meet constitutional principles? To paraphrase, the last sin is maybe the greatest treason, to attempt to do the right thing with the wrong reasons.

The legislative role of the Senate is undisputed. Under Section IV of the 1867 Constitution entitled "Legislative Power," section 17 reiterates:

There shall be One Parliament for Canada, consisting of the Queen...the Senate, and the House of Commons.

Section 18 goes on to emphasize the privileges, immunities and powers of the House and the Senate.

The Constitution states unequivocally that legislation, to be lawful and binding, requires three actors: the two Houses of Parliament, the other place and the Senate, and of course the Governor General on behalf of the Crown. Yet, this bill mysteriously fails to follow the express provisions of the Constitution.

Honourable senators, what are we to do? Let us retrace the path of our constitutionality and constitutional practice in the hope of convincing the promoters and advocates of the bill in this place that a renovation of the bill may be necessary for it to achieve its own desired purpose.

How disastrous the consequences if, honourable senators, this bill is challenged and found wanting, found to be unconstitutional and, hence, an illegitimate act in constitutional terms, or on its face to be of no force and effect in that it is inconsistent with the principles, express and implied, of the Constitution. All of this could occur at the very moment when the separatist forces in Quebec, seeing winning conditions, seek to renew or pursue their project. This surely is a most dangerous course for the advocates of this bill to follow. By excluding the Senate, the bill fails, as I have said, on its face to meet the express provisions of the Constitution, as both written and interpreted.



Honourable senators, let us look at the validity of this bill through different prisms. What of constitutional conventions? What of constitutional usage? What of constitutional practice? What of constitutional custom? What of the rule of law, as articulated by the Supreme Court and expressed in the preamble of the Charter itself? What of the express powers and privileges of the Senate? What of the amending power of the Senate if the action in this bill is a certain precondition to amendment?

Can the advocates of this measure give us any single example where the legislative oversight of the Senate, created precisely to represent sectional and regional interests and minority rights under our federal system, has ever been thus evaded? Is there any example the advocates of this bill can bring forward that cannot be readily distinguished?

As honourable senators can see, profound and mighty questions are raised by this most exceptional legislative act. Does it meet the federal principle and the rule of law that the Supreme Court has held were inseparable in the Constitution? What kind of unpredictable violence does it do to the bicameral principle of Parliament?

Finally, honourable senators, is the product sought by this bill a binding resolution, a mandatory resolution, an obligatory resolution, an imperative resolution, that can fetter and bind the executive's discretion, that can fetter and bind the executive's prerogative, without the assent of both Houses or of the Crown? Indeed, are the binding resolutions sought by the executive in this act "legislative acts"? Are these binding resolutions, in pith and substance, legislative acts? If they are legislative acts, can they meet the test of the rule of law and constitutional principles and practices where the Senate does not expressly participate?

This bill, Bill C-20, is not an exercise in political science. The resolutions sought may lead to the dismemberment of Canada. If the purpose of the executive is to give greater legitimacy, greater credibility, to win the public's hearts and minds by adherence and respect for the rule of law, does it not take a gamble with Canada's future if it charts on its own a different course with only one House, which it controls?

Let me conclude, honourable senators, with one of the best artistic expressions of the rule of law that it is our senatorial and constitutional duty to uphold. This is from Robert Bolt's magnificent play, *A Man for all Seasons*:

Sir Thomas More: The law, Roper, the law. I know what's legal not what's right. And I'll stick to what is legal...

William Roper: So now you'd give the Devil benefit of law!

Sir Thomas More: Yes. What would you do? Cut a great road through the law to get after the Devil?

William Roper: I'd cut down every law in England to do that!

Sir Thomas More: Oh? And when the last law was done, and the devil turned around on you — where would you hide, Roper, the laws all being flat? This country's planted

thick with laws from coast to coast — Man's law, not God's — and if you cut them down — and you're just the man to do it — d'you really think you could stand upright in the winds that would blow then?

Honourable senators, do we think we can stand upright if our concerns on the rule of law are not satisfied? The onus is on the advocates of this bill to carefully allow a full and open hearing in a committee that, hopefully, does not prejudice these most weighty issues.

• (1550)

Does the bifurcation of Parliament, without constitutional amendment, not raise more questions of doubt than the clarity it seeks to bring to this awesome issue?

All senators will recall President Vaclav Havel's speech on the rule of law in the other place a short time ago. Let me conclude with the words of Vaclav Havel, the Czech leader, president and author, who wrote in a book entitled *Disturbing the Peace*:

The good and the bad things we do each day are a constituent part of our history. History does not take place outside history, and history is not outside of life....

Honourable senators, this bill embarks us on a historic voyage. We should navigate with caution and with care. The country may be at stake.

**Hon. Lowell Murray:** With the honourable senator's permission, I wish to ask him a question.

**Senator Grafstein:** Yes.

**Senator Murray:** The conclusion I draw from his speech, as I drew from the speech of our colleague Senator Joyal a while ago, is that, in his opinion, the bill is, on at least several counts, unconstitutional.

What amendments can we make that would repair that difficulty?

**Senator Grafstein:** Again, this is my precursory view, but I should hope that, as we have had in the past in following the practice of the Senate, we will have a full and open hearing at committee, where experts, having had the advantage of reading the *Debates* at second reading, will be able to opine on their particular views. As a result of that, we should come to some consensus on whether or not the views that Senator Joyal and I and others share as to constitutionality are reflected by way of evidence in the committee.

Honourable senators will recall that I disagreed with the government on the Nisga'a bill. I was not a member of the committee; yet I went to practically all the committee hearings. We had a full and fair hearing. We had all of the views reflected. I believe, as Senator Joyal has said, that every member and the chair of this committee will allow a full and fair airing of all the evidence that would reflect on the opinions that you have heard here today.

I do not believe that I will be invited to be a member of that committee, but I certainly will attend, as any senator may, including an independent one, and listen and, I hope, participate in the questions and answers fairly. At the end of that process, I would expect to come to an appropriate conclusion.

My preliminary belief is that this bill is flawed. None of us would like to have a bill premised on constitutional principles being itself unconstitutional. That would be a horrible result. All honourable senators recognize the importance of this measure, the exceptional nature of this measure, and I am confident that all senators will not prejudge the matter, but will give their full faith and credit to the evidence that is presented and only then, perhaps, disagree with the evidence.

For instance, I have some fundamental disagreements with the Supreme Court of Canada's advisory opinion.

**Senator Murray:** That was my next with question.

**Senator Grafstein:** The good news, honourable senators, is that it is an opinion. It is not a judgment. The good news is that there may be some dicta. Who are we to stand up against the Supreme Court of Canada? Well, I will tell you who we are. We are senators, who are supposed to be supreme when it comes to law-making.

**Senator Murray:** I appreciate the thoughtful analysis that the honourable senator has given to this bill, as he did to the Nisga'a bill. While I was somewhat critical of his decision to abstain at second reading of the Nisga'a bill, upon further reflection I found myself in his company on the abstention.

That being said, until this very moment, the honourable senator had been careful not to discuss or to criticize the advisory opinion of the Supreme Court of Canada. Indeed, Senator Joyal was, I thought, at some pains not to do so either. Perhaps that reflects their professional training.

**Senator Cools:** Yes.

**Senator Murray:** No one wants to criticize the court unnecessarily, I least of all.

However, if the bill is flawed, as my honourable friend suggests, is it not possible that the advisory opinion of the court is responsible for that? The advisory opinion of the court is flawed in that after they answered the three questions put to them by the Order in Council, they ventured a political essay in the broad sense, which, in my very respectful opinion, is beyond the realm of their experience and of their mandate.

The advisory opinion, in a number of respects, has created a great deal of difficulty for "political actors."

Let me take up one point that the honourable senator made. The good news is that it is advisory only. I have the opinion here. I shall not get it out and read to you the exact sentence, but it is forever engraved on my mind: "These are binding legal obligations under the Constitution." I believe I am quoting almost word for word.

When they talk of the binding legal obligations under the Constitution, they are talking about the process that they are putting forward in the event of a referendum on secession in a province.

A short while later, when he was taking his retirement from the court, the Right Honourable Antonio Lamer, in a celebrated interview with *Le Devoir*, was at some pains to say what appeared to me to be the contrary position; namely, that no one is bound by this, that it is just an advisory opinion, et cetera. What does my friend make of all that?

**Senator Grafstein:** Honourable senators, there are three issues. I will try to deal with them shortly, if I can.

First, regarding the advisory opinion of the Supreme Court of Canada, I believe former chief justice Lamer was correct when he said that that opinion is an opinion. It is not a judgment; it is an opinion. An opinion is much different from a judgment. As Senator Joyal pointed out in *Re Broadcasting*, or in even a better case, the Manitoba reference with respect to the bilingual statutes, there was a clear judgment with clear principles, and *stare decisis* follows.

The nice question for lawyers — and also for senators — is whether the Supreme Court of Canada, under the rule of *stare decisis*, must follow an opinion as opposed to a judgment. I believe they are bound to follow a judgment unless they are able to find different facts or templates that they can shift. They are freer to change their viewpoint when it comes to an opinion. I do not think they are bound by *stare decisis*.

I share Senator Cools' concern about the court perhaps proceeding beyond the exercise of its constitutional duties from time to time. I was the only senator who attended at the final arguments on the advisory opinion. Speaking for myself, I was displeased with the argument that was made at that time.

**Senator Murray:** Why? By the government?

**Senator Grafstein:** By the government and by the parties to the opinion. The reason I fundamentally agree with Senator Joyal is that the argument that he made so soundly, thoroughly and correctly about the country being one and indivisible was not —

**The Hon. the Speaker:** I regret to inform Senator Grafstein that the 15-minute period for the speech and questions has expired.

• (1600)

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I would propose that the time for Senator Grafstein's speech, comments and questions be extended by a further 15 minutes.

**The Hon. the Speaker:** Is it agreed, honourable senators, that leave be granted for a further 15 minutes?

**Hon. Senators:** Agreed.



**Senator Cools:** Honourable senators, I do not understand what just happened. Was that a motion of some kind? It seems to me that the request for time should come from Senator Grafstein.

**Senator Grafstein:** I find that perfectly acceptable, unless other senators disagree.

**Senator Hays:** Senator Cools has asked whether or not this is proper. The new ruling was just given today, so perhaps the honourable senator has not had time to read it. The ruling states at page 4:

Accordingly, it is my ruling that a request to extend time for debate can be qualified with a statement indicating the time of the extension. This statement can be proposed either by the senator making the request or by any other senator so long as any discussion related to the request for leave is kept very brief.

**Senator Cools:** Honourable senators, there is a bit of a problem because one cannot discuss Speaker's rulings. I would have absolutely no problem if Senator Grafstein requested another hour. I would agree. We cannot, however, discuss and debate a ruling. The particular question is: Who should intervene to allow suspensions of time?

**The Hon. the Speaker:** Honourable Senator Cools, I must ask you not to discuss or debate it in that case. A 15-minute extension has been granted to Senator Grafstein.

**Senator Grafstein:** Thank you, honourable senators.

Let me conclude on the third issue. I have covered the first two.

As Senator Joyal and Senator Finestone said, we have the bill before us; we are obliged to deal with it. I find the bill curious. The word "resolution" is used and the Oxford dictionary says that "resolution" can mean many things. It can mean "an opinion." With the House of Commons, the executive can seek a non-binding resolution. The two Houses do that all the time.

This resolution is different. It is binding, obligatory, imperative — all of the legal words — and I use those words carefully.

We are then told by the advocates of the bill that, no, this is just a means of fettering the executive decision that can be done in the other place. When you turn to the amendment provisions in the Constitution, it calls for resolution.

Is this resolution, in pith and substance, a legislative act? I believe it is. If it is not, I have no quarrel. If it is, then this house has a constitutional responsibility to deal with the matter as the product of this particular bill.

Honourable senators, this is an important point. It goes to the question of the powers of the Senate. It goes to the question of the prerogatives of the Senate. It goes to the question of the privilege of the Senate and its constitutional practice and usage.

If one wants to parse my speech, I have tried to, in a short way, indicate all the many principles that I believe may have been

offended by this piece of legislation. I should hope that the committee, in the fullness of time, will examine each one of those separate propositions with their separate constitutional consequences.

**Senator Murray:** That will take time, senator.

**Senator Grafstein:** It will not take that much time. I do not believe it will be a laborious exercise. I believe that the experts in the country will be able to come forward and opine on this issue because we do have a great deal of expertise. This issue is complicated, and I hope the committee will allow itself the appropriate time to study it carefully.

Perhaps other senators who have not followed the matter carefully will require more time. I understand that. For me, it will not take much time.

**Senator Cools:** Will the Honourable Senator Grafstein take a question?

**Senator Grafstein:** Yes.

**Senator Cools:** I believe Senator Murray is absolutely right. The judgment at paragraph 153 in the advisory opinion states exactly that:

The obligations we have identified are binding obligations under the Constitution of Canada.

It becomes a moot or academic point because the government has taken it as obligatory and Bill C-20 is a reflection thereof.

That is not my question. According to the bill and according to the advisory opinion, we have a situation where we will have, if one can call it that, an outgoing Canada and an incoming Canada, or an old Canada and a new Canada. Senator Joyal raised very eloquently the sovereignty of the people of Canada and the fact that government should operate with the consent of the sovereign's will of those people.

Honourable senators, I am a colonial so I know a little about movements of one status of a state to another. I have not yet heard anyone address the question of who speaks for the emerging Canada. In other words, when countries emerge, as in 1867 when a new nation emerged, it was the emerging representatives who spoke and who said, "We wish to form a union."

I understand that constitutions operate positively, not negatively. In other words, any authority in Parliament or government on behalf of the people of Canada ends with the end of Canada.

My question to Senator Grafstein is whether he has addressed this particular question. Who will be the representatives of the emerging Canada, if one could call it Canada, or the Canada equivalent? How will they purport to learn and to obtain the sovereign will of the people of the prospective state, whatever it will be called?

**Senator Grafstein:** I have two points, and I will not be exhaustive. There is a bit of contemporary conceit in this bill. The conceit is that the players, as presently presented in either house, will even be here to deal with this particular matter.

**Senator Cools:** Yes.

**Senator Grafstein:** I disagree with the position that the honourable senator has suggested the government has taken — and even if it has taken that position, I am not sure it is correct —

**Senator Cools:** It is very wrong.

**Senator Grafstein:** — that they are bound by an advisory opinion. I leave that for this government or future governments to address. In my view, they are not bound by the opinion. It is an advisory opinion.

The Province of Quebec has been on all sides of this particular question. They agree or disagree depending on the time of day.

Senator Cools raises another interesting question. The only piece of relevant history I can give her is the American history. There was a huge debate between the fathers of the American union. When they went out with a constitutional convention, they passed articles, and George Washington, Madison, Jefferson and all the fathers were mightily concerned that they may have been doing something illegal or unlawful. George Washington, in particular, was concerned that the foundation of the United States might have been based on illegal means. As quickly as they could, therefore, they established Congress. They insisted that Congress adopt the articles that were presented by the convention.

Who speaks for whom? Who speaks for the new or the old? I shall tell you who speaks for Canada. The Parliament of Canada speaks for Canada. Until such time as that is altered, Parliament — that is, the Senate and the other place — speaks for Canada.

• (1610)

**Senator Cools:** I agree absolutely with Senator Grafstein. I hope that, as the discussion proceeds, some of these issues will emerge even more clearly. I thank the senator for his addition to the subject.

I am grateful to Senator Joyal for raising the American situation. His comments related not so much to the American Revolution, as to the context of the American Civil War.

Honourable senators, I have studied a fair amount about the American Civil War. My husband's great-grandfather marched in the American Civil War. When I was a very young girl, in the Caribbean, I was taught that constitutional parliamentary government was by far superior. We were told this was so because the parliamentary system would avoid bloodshed and revolution.

At some point in this debate, the entire question of revolution, civil war and bloodshed will be raised.

**Hon. Serge Joyal:** Honourable senators, I should like to commend Honourable Senator Grafstein for enlightening me on

some of the legal aspects raised in this bill. However, he did not address the specific issue that the government leader has expounded on, that is, the prerogative.

In the evaluation of clause 1 of the bill in relation to the resolution, has the honourable senator had the opportunity to research the argument that this legislative initiative is an expression of the prerogative? As such, how would one bind the resolution's use in the exercise of the prerogative versus a simple act of Parliament?

**Senator Grafstein:** That is a most complex question, and I hope the committee will look at it.

I am not satisfied that the executive can bind or limit their own prerogative in this particular fashion. They can delegate power to a subordinate entity, but I am not sure whether they can limit their own prerogative in this particular fashion without, perhaps, a constitutional amendment in its proper form. Therefore, if there were such a question, for greater clarity and certainty, it would be important for both Houses to pass it and for the Queen to assent to it. There is then a safeguard for the limitation of the executive's prerogative. That question should be raised and carefully explored by the committee.

On motion of Senator Hays, for Senator Cools, debate adjourned.

[Translation]

## CANADA ELECTIONS BILL

### THIRD READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

**Hon. Pierre Claude Nolin:** Honourable senators, I shall be brief, since I have amendments to introduce.

The political parties of Canada are governed by the Canada Elections Act. Bill C-2 is intended to repeal that act and to create a new one. The main registered political parties must maintain transparent financial activities. To that end, the present legislation requires each registered party to have a chief agent. The role of this individual is comparable to the official agent a candidate is required to have for a specific riding.

Since we started examining Bill C-2, I have received correspondence from citizens, lobbyists in particular, calling upon me to closely examine the disclosure of financial information from political parties and demanding more transparency, particularly where riding associations are concerned.



National parties are required to submit detailed reports. In fact, under Bill C-2, more information will have to be provided annually by the various political parties.

The House of Commons, in 1988, the Lortie commission, in 1993, and the Chief Electoral Officer, in his 1996 report following the 1993 election, all asked for greater transparency regarding the political parties' finances and financial transactions. The Lortie commission and the Chief Electoral Officer were even more specific. They expressly asked that the act be amended to include riding associations.

I want to point out something that is not new, namely, that about 80 per cent of Canadian population is already governed, at the national level, by such provisions. Six provinces out of ten already have such measures in their elections act, including Quebec, since 1977. Ontario also has similar measures, whereby riding associations are an integral part of political parties. As such, they must submit detailed financial activity reports, which are examined by authorized auditors.

The current act, like the proposed bill, states that an riding association can have a registered agent, but it does not specify the responsibilities or mandate of that agent.

• (1620)

I agree with what the Chief Electoral Officer and the Lortie commission asked in 1993. In fact, at least two members of the Lortie commission are now among our colleagues. What they asked is not complicated. They asked for transparency. Canadians deserve the greatest possible transparency when it comes to the finances of political parties. There is transparency at the national level. It is so good that our system serves as a model all over the world.

However, there is a grey area. The Chief Electoral Officer said so in his 1996 report. He told us in committee that if we did not amend the act, he would ask us to do so the next time. He said he would keep on asking us until we did it, so we should do it.

He is the officer of Parliament responsible for the integrity of the electoral system of which we are so proud. I had a speech, I could have told you why transparency is necessary. For example, what happens to the agent of a riding association if the member of Parliament changes political parties? Ask Mr. Nunziata in the other place what happened to his riding association fund. Chances are the money left with him and is no longer in the coffers of the Liberal association in his riding.

What happens when a riding association changes executive? Ask the New Democratic Party what happens to the riding association's money. People will tell you that in their party all the money must go through the central committee in Ottawa. What happens if someone contributes to the party and does not want an income tax receipt? What is there to compel the treasurer of the riding association deposit the cheque in the riding association's bank account? This is a very slippery slope. We must protect ourselves.

We are supposed to have the best Elections Act in the world; it is given as a model. There is a flaw in the act and it is our duty in

the Senate to introduce these amendments. In the House of Commons, they are in a conflict of interest and they do not want us to mess around with the Elections Act. During the debate on electoral boundaries they said, we were meddling in their affairs. Indeed we were.

**Senator Prud'homme:** And it is a good thing we did.

**Senator Nolin:** Honourable senators, I should like to introduce some amendments dealing with what I just talked about.

**Senator Prud'homme:** If I like them, I will support them.

**Senator Nolin:** These amendments make significant changes to clause 375 of the current bill, which deals with the registered agents of political parties at the riding association level.

#### MOTIONS IN AMENDMENT

**Hon. Pierre Claude Nolin:** Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 375, on page 154,

(a) by replacing line 27 with the following:

“375. (1) A registered party shall, subject to”;

(b) by replacing line 32 with the following:

“registered party shall appoint a person, to be”;

(c) by adding the following after line 36:

“(3) The registration of an electoral district agent is valid

(a) until the appointment of the electoral district agent is revoked by the political party;

(b) until the political party that appointed the electoral district agent is deregistered; or

(c) until the electoral district of the electoral district agent no longer exists as result of a representation order made under section 25 of the *Electoral Boundaries Readjustment Act*;

(4) Outside an election period, the electoral district agent of a registered party is:

(a) responsible for all financial operations of the electoral district association of the party; and

(b) required to submit to the chief agent of the registered party that appointed the person to act as the electoral district agent an annual financial transactions return, in accordance with subsection (5), on the electoral district association's financial transactions.

(5) The annual financial transactions return referred to in subsection (4) must set out

(a) a statement of contributions received by the following classes of contributor: individuals, businesses, commercial organizations, governments, trade unions, corporations without share capital other than trade unions, and unincorporated organizations or associations other than trade unions;

(b) the number of contributors in each class listed in paragraph (a);

(c) subject to paragraph (c.1), the name and address of each contributor in a class listed in paragraph (a) who made contributions of a total amount of more than \$200 to the registered party for its use, either directly or through one of its electoral district associations or a trust fund established for the election of a candidate endorsed by the registered party, and that total amount;

(c.1) in the case of a numbered company that is a contributor referred to in paragraph (c), the name of the chief executive officer or president of that company;

(d) in the absence of information identifying a contributor referred to in paragraph (c) who contributed through an electoral district association, the name and address of every contributor by class referred to in paragraph (a) who made contributions of a total amount of more than \$200 to that electoral district association in the fiscal period to which the return relates, as well as, where the contributor is a numbered company, the name of the chief executive officer or president of that company, as if the contributions had been contributions for the use of the registered party;

(e) a statement of contributions received by the registered party from any of its trust funds;

(f) a statement of the electoral district association's assets and liabilities and any surplus or deficit in accordance with generally accepted accounting principles, including a statement of

(i) disputed claims under section 421, and

(ii) unpaid claims that are, or may be, the subject of an application referred to in subsection 419(1) or section 420;

(g) a statement of the electoral district association's revenues and expenses in accordance with generally accepted accounting principles;

(h) a statement of loans or security received by the electoral district association, including any conditions on them; and

(i) a statement of contributions received by the electoral district association but returned in whole or in

part to the contributors or otherwise dealt with in accordance with this Act.

(6) For the purpose of subsection (5), other than paragraph (5)(i), a contribution includes a loan.

(7) The electoral district association shall provide the chief agent of a registered party with the documents referred to in subsection (5) within six months after the end of the fiscal period.”; and

(d) by renumbering subsection (3) as subsection (8) and any cross-references thereto accordingly.

Honourable senators, I have other corollary amendments to make in both official languages.

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended in clause 405, on page 166, by replacing lines 36 and 38 with the following:

(3) No person, other than a chief agent, or a registered agent or an electoral district agent of a registered party, shall accept contributions to a registered party.

(4) No person, other than a chief agent of a registered party, shall provide official receipts to contributors of monetary contributions to a registered party for the purpose of subsection 127(3) of the *Income Tax Act*.

• (1630)

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 424, on page 174, by replacing lines 14 to 16 by the following:

“(a) the financial transactions returns, substantially in the prescribed form, on the financial transactions of both the registered party and of the registered party's electoral district associations;”

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 426,

(a) on page 176, by replacing lines 36 to 38 with the following:

“shall report to its chief agent on both its financial transactions return and trust fund return referred to in section 428, and on the annual financial transactions return on the electoral district associations' financial transactions referred to in paragraph 375(4)(b), and shall make any”; and

(b) on page 177,



(i) by replacing line 11 with the following:

“electoral district agents, registered agents and officers of the regis-”, and

(ii) by replacing line 20 with the following:

“electoral district agents, registered agents and officers of the party to”.

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 473, on page 202, by replacing lines 37 and 38 with the following:

“registered party or to a registered agent of that registered party in the”.

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 477, on page 203, by replacing lines 30 to 31 with the following:

“477. A candidate, his or her official agent, and the chief agent of a registered party, as the case may be, shall use the prescribed forms for”.

Honourable senators, I move, seconded by the Honourable Senator Prud'homme:

That Bill C-2 be not now read a third time but that it be amended, in clause 560, on page 246,

(a) by replacing line 18 with the following:

“ceipt with the Minister, signed by the chief agent or a registered”; and

(b) by replacing line 25 with the following:

“(a) by the chief agent or a registered agent of a registered”

[English]

**The Hon. the Speaker *pro tempore*:** Honourable senators, is leave granted for Senator Nolin to present seven amendments?

**Hon. Senators:** Agreed.

**Senator Nolin:** Dispense.

**The Hon. the Speaker *pro tempore*:** Shall I dispense with the reading of the seven amendments?

**Hon. Senators:** Agreed.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I wish to thank Senator Nolin for the work

he has done in preparing a presentation and series of amendments. These amendments would require a much higher level of reporting by riding or constituency associations than is presently provided for in Bill C-2.

This is an initiative with which I am not totally unsympathetic. My own feelings are in accord with the honourable senator's on the value of transparency in all matters to do with our democracy. At the heart of that is the way in which we elect our representatives. Senator Nolin pointed out in his speech that most provinces have provisions that require a higher level of disclosure. That is, to me, a strong indication of where we are headed at the national level.

In opposing the amendments, I ask honourable senators to consider where Bill C-2 in its present form, unamended, will take us in terms of progress towards the ultimate goal of greater transparency and more disclosure. Senator Nolin referred to the important role of the Chief Electoral Officer. I totally agree that he is of extraordinary importance and has a great responsibility for ensuring that the integrity of our system is maintained. However, in addition to the Chief Electoral Officer, the political parties recognized in accordance with provisions of the legislation also have an important role and a high duty to ensure adequate levels of transparency and behaviour — shall I say economic behaviour as well as political behaviour — on the part of the riding associations which constitute the political parties.

In my mind's eye, the most important political institution in the country is the riding association. Most parties then have a means of breaking down the ridings by provinces or territories, and then nationally. I list them in my mind's eye in the order of importance, namely ridings, provincial and territorial, and the national association.

The parties which constitute the entity of the ridings, the provincial and territorial associations and the national party are accountable, at least every five years through a general election, to the public that they represent at the various levels. Therefore, the way in which those parties are run and the way in which political and economic accountability and transparency of the riding associations is administered by those parties is to some considerable degree an answer to what is behind the amendments. A party that allows a riding association to do something that is improper will pay a political price and is accountable for that transgression.

I acknowledge, having said that, that different rules requiring transparency will bring that transgression to light sooner than they might under the law as presently constituted. However, as Senator Nolin acknowledged at the beginning of his comments, Bill C-2 does require a much higher level of accountability and transparency in terms of publishing donor's names and addresses, disclosure of trust funds that contribute to campaigns, disclosure of transfers to constituencies by the federal or provincial associations, and in numerous other ways. That includes the disposition, following the election, of surplus funds for which the candidates are accountable under our system. They have been so responsible for a long time in terms of them constituting a receipting entity in terms of disposition of those funds and saying that those funds cannot be transferred to a candidate who has been successful.

• (1640)

Without going on at length and reciting the provisions of the act that call for that greater level of transparency through the federal associations that are responsible for what are our political parties, and highlighting the importance of our system and the fact that it has worked extremely well in terms of the healthy democracy that we have in Canada, through the ridings being supervised by the associations of which they are a part at the provincial, territorial and national level, I am not in support of Senator Nolin's amendments.

Therefore, I urge honourable senators not to vote in favour of them. I would be happy to answer questions or receive comments.

**Hon. Marcel Prud'homme:** Honourable senators know that I was elected nine times. I never spent more than \$25,000 to get elected in any election. Some of that money was raised by my own family in order that I could keep my independence.

The Honourable Senator Hays has been a president of the Liberal Party of Canada, and a very popular one indeed. The Liberal Party should be thankful that he was president. Sitting next to Senator Hays is a former president of the party whom I supported very strongly under Mr. Trudeau's regime. Our Speaker has also been president of the party, and I was a strong supporter of him as well. There are others here in the Senate who held the same position.

All that is to say that there is a great deal of experience in this place. Honourable senators know that the intention of Senator Nolin's amendments comes about as a result of his long experience. To speak in a communistic way, he himself has been an apparatchik of his own party. I was probably a smaller apparatchik of my party. I see that Senator Milne is also here. She is highly knowledgeable about the hanky-panky of politics. My good friends Senators Finnerty, Taylor and Carstairs are also here late on a Thursday afternoon, while everyone else seems to be in Quebec trying to save a good and honest leader, although one who may not be the most popular.

I do not expect Senator Hays to support the amendments. I seconded them for the pleasure of discussing them. Does he agree that something will have to be done? It is a fact that some constituencies are sitting on loads of money that they refuse to pass along to their party, which, sometimes, is in dire need of money. I do not think that is fair or correct. I know that some local riding associations — and I do not want to be partisan — are sitting on hundreds of thousands of dollars while their party is starving.

That alone should be enough for us to say, "There is a point there and something will have to be done." Everyone is agreed that something must be done. It is like the famous song in Quebec, "Tout le monde veut aller au ciel mais personne ne veut mourir," which means that everyone wants to go to heaven but no one wants to die.

Does the honourable senator agree that, perhaps in a different atmosphere, but not delaying any further, something will have to

be done to put our houses in order so that we can continue to preach that we have the best electoral laws in the world? Other countries ask us to share our expertise with them, be it the International Parliamentary Union, NATO, members of the Commonwealth or the French associations. They want to share our electoral laws.

Does the honourable senator agree that with his experience, and with the collective experience of all those I see around me, something will have to be done?

**Senator Hays:** Honourable senators, Senator Prud'homme is right. We have here — and Senator Prud'homme is first among them — a group of people who have vast experience and, accordingly, a lot of wisdom in this area.

The honourable senator asks if I agree that something will have to be done. Senator Nolin said that the Chief Electoral Officer wants more than Bill C-2 gives. He refers to the precedent of the provinces. His own amendment indicates the direction in which we are going. I repeat, and Senator Nolin acknowledged it, Bill C-2 takes us much further than we were before in the existing law that will be amended if this bill is given third reading and passed. If an election is held after the law comes into force, there will be a greater level of transparency and accountability.

I feel obliged, however, to repeat something. Something is being done. A political party that does not know — and I am speaking here in an abstract way — what its riding associations are doing, how much money is in the bank and what that money is being spent on is not doing its job. I suggest to honourable senators that the political parties of this country do know what is happening at the riding level. They do know what is in their bank accounts and how the monies are spent. That is the economic accountability issue to which I referred.

I think our democracy is healthy. Our level of transparency and accountability, while not perfect and which would be advanced considerably by the amendment, and in the minds of many should be, is a good system that works well. I think 130-some odd years of experience in terms of elections — and I am only familiar with the most recent ones while Senator Prud'homme is familiar with more — has proven that through election cycle after election cycle.

That is the best answer I can give, honourable senators. In giving the answer, I am trying reinforce the position of my colleagues that the bill as presented is a good one and should be supported without amendment.

[Translation]

**Senator Nolin:** Honourable senators, I was expecting Senator Hays to show me how well-organized political parties have adequate control over their financial activities. However, I challenge him to tell me right now that his national political party knows exactly where all the funds solicited — let us talk simply at the regional level — by any candidate for the Liberal Party of Canada come from and that the use of these funds is duly documented.



If he tells me that it is possible but that he does not know, I will understand. In this sense, I may be going too far by challenging him, but I am convinced that he cannot tell me for sure that his party knows exactly where the funds are at the local management level.

• (1650)

Does the honourable senator not think that it would be much better for the transparency and credibility of our system if this were included in the bill, with all the penalties that involves. If we do not adopt the amendments I moved, we will not be able to improve this system once and for all. It is already improved in the provinces for 80 per cent of Canadians.

[English]

**Senator Hays:** Honourable senators, when I made my comments, they were not about a political party. They were comments intended to describe parties in a generic or an abstract way. I do not intend to comment on either the party that I belong to or on anyone else's party.

The thrust of your question is: Would it not be easier and better if the Chief Electoral Officer and his bureaucrats looked after this for us? We would feel better about it then. This question arises again and again in public life: Who should be exercising power? There has always been an undercurrent to the effect that, if we had bureaucrats, or if the Auditor General ran the country, everything would be just fine. The fact is that the same human beings with the same frailties exist throughout the system, whether they are political or bureaucratic. I believe that the power and these responsibilities should be moved carefully away from the politicians. They are accountable through their parties and, in the case of the our democracies, in general elections.

If these parties do not know what is happening, they should. I believe that for the most part they are knowledgeable. Do they have every bit of knowledge that they should have? Probably not. Would they have it if your amendment were passed and in force in five years? Probably not. The system is working well. It is healthy and improved. We are heading more and more towards a greater level of disclosure, transparency and accountability, and I think we will continue to do so. The rate at which that progresses will be measured in the changes that are contained in Bill C-2. At the next revision of the act, we will see another measure of that progression.

In answer to the question, Senator Prud'homme, we are heading in that direction. We will require greater disclosure and accountability. How we do it, however, is something on which we should move at a measured pace. I think we are doing that and I think we have taken a good series of steps forward in Bill C-2.

**The Hon. the Speaker *pro tempore*:** Honourable senators, the allotted 15 minutes allowed on this question are over, however, Senator Milne had a question.

**Hon. Lorna Milne:** Honourable senators, I want to make a comment on this particular bill.

**The Hon. the Speaker *pro tempore*:** Is permission granted, honourable senators?

**Senator Hays:** Leave is granted to extend the time. However, the senator does not need leave to speak because she is speaking in the first instance.

**Senator Milne:** Honourable senators, since I have been accused in this place of hanky panky, I think I should stand up and defend myself, as well as speak to the amendment.

**The Hon. the Speaker *pro tempore*:** Order!

**Senator Prud'homme:** On a point of order, I have great respect and friendship for Senator Milne. She said, "I have been accused of hanky panky." Her statement was made right after Senator Nolin, Senator Hays and I had spoken. I hope she was not referring to one of us. I doubt very much that a gentleman like either Senator Hays or Senator Nolin — and, hopefully, a gentleman like me — would ever whisper comments like that. Perhaps it came from her neighbour. It did not come from this side.

**Senator Taylor:** I am at the age where I could consider that a compliment!

**Senator Milne:** In the debate within the committee on this particular bill, it was pointed out clearly and quite accurately that this is an Elections Act, not a "between Elections Act." If we are asking political parties, between elections, to account for every five cents they spend or raise on a garden party or on hot dogs and have the Chief Electoral Officer of Canada scurrying around within the internal affairs of party ridings between elections, then we are going a bit far. This bill brings a great deal of openness to the entire party funding procedure at election time, and I think we should support the bill as it is and not the amendments.

On motion of Senator Taylor, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, under Government Business, I should like to call Bill C-22, next.

## PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with the reprinted Bill C-22, to facilitate combating the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading Tuesday, May 16, 2000.

• (17:00)

## AGRICULTURE AND FORESTRY

COMMITTEE AUTHORIZED TO MEET  
DURING SITTING OF THE SENATE

**Hon. Thelma J. Chalifoux,** for Senator Gustafson, pursuant to notice of May 4, 2000, moved:

That the Standing Senate Committee on Agriculture and Forestry have power to sit at 3:30 p.m. on Tuesday next, May 16, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

Motion agreed to.

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

UPDATE "OF LIFE AND DEATH"—  
MOTION TO AUTHORIZE SUBCOMMITTEE TO MEET  
DURING SITTING OF THE SENATE WITHDRAWN

On Motion No. 66:

That the Subcommittee to Update "Of Life and Death" have power to sit on Monday next, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. Sharon Carstairs:** Honourable senators, the Deputy Leader of the Government has made it clear that we will not be sitting on Monday. That being the case, there is no need for this motion. I would ask permission of the chamber for unanimous consent to withdraw the motion.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is there unanimous consent that this motion be withdrawn?

**Hon. Senators:** Agreed.

Motion withdrawn.

[Translation]

## TRANSPORT AND COMMUNICATIONS

COMMUNICATIONS—MOTION TO AUTHORIZE SUBCOMMITTEE TO MEET DURING SITTING OF THE SENATE WITHDRAWN

Motion No. 67:

That the Subcommittee on Communications have the power to sit on Monday, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. Marie-P. Poulin:** Honourable senators, since the Deputy Leader of the Government has informed us that the Senate will not be sitting on Monday, May 15, 2000, I seek unanimous consent of to withdraw this motion.

**The Hon. the Speaker *pro tempore*:** Is leave granted to withdraw the motion, honourable senators?

**Hon. Senators:** Agreed.

Motion withdrawn.

[English]

## AGRICULTURE AND FORESTRY

MOTION TO AUTHORIZE COMMITTEE TO MEET  
DURING SITTING OF THE SENATE WITHDRAWN

On Motion No. 68:

That the Standing Senate Committee on Agriculture and Forestry have power to sit on Monday next, May 15, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. Thelma J. Chalifoux:** Honourable senators, on behalf of Senator Fairbairn, I ask for unanimous consent to withdraw this motion.

**The Hon. the Speaker *pro tempore*:** Honourable senators, is there consent to withdraw this motion?

**Hon. Senators:** Agreed.

Motion withdrawn.

## ADJOURNMENT

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday next, May 16, 2000, at 2 p.m.

Motion agreed to.

The Senate adjourned until Tuesday, May 16, 2000, at 2 p.m.



**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
 (2nd Session, 36th Parliament)  
 Thursday, May 11, 2000

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan, Japan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	0	99/12/16		
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02	00/04/04	Transport and Communications	00/05/09	2			
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21	00/04/04	Foreign Affairs	00/05/04	0			
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21	00/04/06	Banking, Trade and Commerce					
S-22	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	00/05/11							

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29	00/03/28	Legal and Constitutional Affairs	00/04/13	0			
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99

C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	Subject matter 99/11/24	99/12/06	99/12/09	00/04/13	5/00
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/17	Legal and Constitutional Affairs	99/11/30	99/12/08	00/03/30 1/00
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	Aboriginal Peoples	00/03/29	00/04/13	00/04/13 7/00
C-10	An Act to amend the Municipal Grants Act	00/03/28	00/04/10	National Finance	00/05/04	00/05/09	
C-13	An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts	00/03/30	00/04/04	Social Affairs, Science and Technology	00/04/06	00/04/10	00/04/13 6/00
C-20	An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference	00/03/21					
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	-	-	99/12/16	99/12/16 36/99
C-22	An Act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence	00/05/09 (withdrawn 00/05/11)					
		00/05/11 (reintroduc ed)					
C-23	An Act to modernize the Statutes of Canada in relation to benefits and obligations	00/04/12	00/05/09	Legal and Constitutional Affairs			
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23	00/03/28	-	-	00/03/29	00/03/30 3/00
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23	00/03/28	-	-	00/03/29	00/03/30 4/00

## COMMONS PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-202	An Act to amend the Criminal Code (flight)	00/02/08	00/02/22	Legal and Constitutional Affairs	00/03/02	0	00/03/21	00/03/30	2/00
C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02							
C-445	An Act to change the name of the electoral district of Rimouski—Mitis	00/05/09							
C-473	An Act to change the names of certain electoral districts	00/04/10							



## SENATE PUBLIC BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-2	An Act to facilitate the making of legitimate medical decisions regarding life-sustaining treatments and the controlling of pain (Sen. Carstairs)	99/10/13	00/02/23	Legal and Constitutional Affairs					
S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin)	99/11/02							
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Grafstein)	99/11/02	00/02/22	Social Affairs, Science and Technology					
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs					
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders					
S-8	An Act to amend the Immigration Act (Sen. Ghitter)	99/11/02							
	<i>(Dropped from Order Paper pursuant to Rule 27(3) 00/05/04)</i>								
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03	00/05/04	Legal and Constitutional Affairs					
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.)	99/11/04							
	<i>(Dropped from Order Paper pursuant to Rule 27(3) 00/02/08)</i>								
	<i>(Restored to Order Paper 00/02/23)</i>								
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18							
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance					
S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16							
S-16	An Act respecting Sir John A. Macdonald Day (Sen. Grimaud)	00/02/22							
S-20	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	00/04/05	00/05/09	Energy, the Environment and Natural Resources					

S-21	An Act to protect heritage lighthouses (Sen. Forrestall)	00/04/12
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## PRIVATE BILLS

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-14	An Act to amend the Act of incorporation of the Board of Elders of the Canadian District of the Moravian Church in America (Sen. Taylor)	99/12/02	99/12/07	-	-	-	99/12/08	00/03/30	



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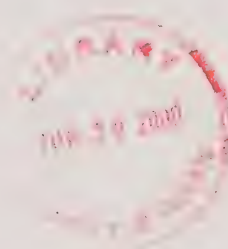
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OFFICIAL REPORT  
(HANSARD)

Tuesday, May 16, 2000

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Tuesday, May 16, 2000

The Senate met at 2:00 p.m., the Speaker *pro tempore* in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### THE LATE KEIZO OBUCHI

##### TRIBUTE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, on Sunday, May 14, former prime minister Keizo Obuchi of Japan died in Tokyo's Juntendo Hospital. As honourable senators are aware, this has come some weeks after former prime minister Obuchi suffered a stroke and fell into a coma.

I wish to join the Right Honourable Jean Chrétien, and I am sure I speak for all senators in this respect, in offering condolences to former prime minister Obuchi's family, the Japanese people, as well as members of the Japanese Diet and his Liberal Democratic Party.

Prime Minister Obuchi was a respected world leader admired for his humility and soft-spoken approach to politics. The Japanese people have been well served by him as a political leader. His tenure will be remembered for many things, among them stimulating Japan's stagnant economy after its worst recession in 50 years and for officially giving the people of Japan a national anthem and flag. He demonstrated an innate ability to bring consensus among the many factions of his party and had a long-standing interest in facilitating friendly relations between Canada and Japan.

For one so young, he made a notable and extraordinary impact. Former prime minister Obuchi will be long remembered and missed.

#### BRITISH COLUMBIA COASTAL PARLIAMENTARIANS

**Hon. Pat Carney:** Honourable senators, I report to this chamber on the work of the B.C. Coastal Parliamentarians. This is an all-party, all-partisan group, including senators, MPs and MLAs, formed out of a mutual desire to exchange views and concerns relevant to British Columbia's coastal communities. There are about 40 villages and towns from Alaska to Steveston.

Coastal parliamentarians have worked diligently together since this group's formation three years ago. I have chaired this group since its inception and run an e-mail network of information and correspondence out of our office. This year, I have handed over the chair to John Duncan, Alliance MP for Vancouver Island

North. The vice-chair of this group is John van Dongen, Liberal MLA for Abbotsford.

Honourable senators, the coastal parliamentarians meet yearly at the Coastal Community Network's annual conference. It provides an important venue for coastal parliamentarians to address issues that have impacted on the region and to bring forward the issues that concern the mayors and councillors, tribal councils and chiefs.

• (1410)

Topics during this year's meeting included the lack of modern telecommunications infrastructure on the West Coast that inhibits tourism and Internet small business, the location of fish farms and wild salmon migration routes, the continuous divestiture of docks and wharves in small communities, as well as inadequacies of ferry services. The CCN theme this year was "New Initiatives, New Beginnings," representing communities that have been hard hit by the disastrous fishing policies of the Liberal government.

In the past few years, the Coastal Community Network has taken on an increasingly important role in providing a forum for B.C. coastal communities to express their concerns, seek information and seek solutions. The CCN has proven that cooperation is the essential ingredient of the decision-making process affecting our coastal communities.

[Translation]

#### THE NAVY LEAGUE OF CANADA

**Hon. Lise Bacon:** Honourable senators, last Saturday, May 13, I had the pleasure to attend the annual review of the Laval corps of the Navy League of Canada. Once again, this was an opportunity for the 12- to 18-year-old members of NLCC Annapolis 43 and RNCC Sioux 11 to show off what they have learned in the past year.

I have had the honour of attending the annual review of the Laval Navy League more than once, and was therefore pleased to note the increase in numbers over previous years. It is nice to see that, at a time when the consumer society is so full of increasingly sophisticated attractions for teens, some of them are still involved in activities that require of participants a sense of discipline and of duty.

It would be far easier for them to spend all their free time in front of a television set or computer screen. Yet week after week, these young men and women, from a variety of cultural and economic backgrounds, meet and join in activities aimed at attaining and surpassing joint objectives. The quality of the annual review I attended on the weekend, and the serious approach participants took to it, show just how enthusiastic and determined these young people are.

In addition to the technical and physical training offered by the Navy League of Canada program, cadets also have the opportunity to put into practice values and principles which will make them better citizens. The Navy League provides the opportunity to develop leadership skills in an atmosphere of camaraderie, and to assume responsibility while developing a sense of solidarity. Far from the picture of today's youth seen so often in the media, the young people I met on Saturday gave me great hope for the future.

In closing, I should like to draw attention to the hard work and devotion of volunteers and parents, which is what makes it possible for these young people to enjoy this unique experience. These Canadians richly deserve our recognition and support of their remarkable work.

## THE LATE JUSTICE JULES DESCHÊNES

### TRIBUTES

**Hon. Michael A. Meighen:** Honourable senators, on Wednesday last, May 10, the Canadian Bar and the Barreau du Québec lost a great luminary in the person of the Honourable Mr. Justice Jules Deschênes, who passed away at the age of 76.

A Companion of the Order of Canada, prolific author of ten books and over 100 articles, speaker in great demand in Canada and abroad, the judge was brilliantly successful in all three of his careers: first, as a lawyer and law professor, second as Chief Justice of the Quebec Superior Court and, finally, as an international jurist elected by the General Assembly of the United Nations to sit on the International Criminal Tribunal for the former Yugoslavia.

Born in Montreal on June 7, 1923, Justice Deschênes was a brilliant student and winner of the medal of the Governor General and of the Lieutenant-Governor of Quebec. Called to the Bar in 1946, he founded the law office of Deschênes, de Grandpré, Colas, Godin and Lapointe, which became in the 1960s the greatest firm of French-speaking lawyers in Montreal.

His remarkable intellect combined with an exceptional capacity for work. His decisions always reflected his exceptional legal mind, his impeccable logic and his great intellectual courage.

He was appointed by Prime Minister Brian Mulroney to head the Commission of Inquiry on War Criminals from 1985 to 1987. This is where, honourable senators, I had the opportunity of making his acquaintance and working with him as legal advisor to the commission. During this period of close cooperation with Mr. Justice Deschênes, I had the opportunity to observe closely his tireless and painstaking work. As the result of the recommendations made by Judge Deschênes and accepted by the Mulroney government, it is now possible for the first time to prosecute individuals accused of criminal acts abroad. Furthermore, his report put an end once and for all to the rumour that the infamous Dr. Joseph Mengele had applied to enter Canada in 1962.

Judge Deschênes was good and kind to everyone who had the privilege of working with him. His devotion to justice and

his integrity have marked us profoundly. He was an example to all, and I shall not forget this great man.

Predeceased by his wife, Jacqueline Lachapelle, he is survived by their five children and 15 great grandchildren. At his funeral yesterday in Saint-Germain d'Outremont church, I was struck by the many eminent jurists and politicians who came, quite rightly, to pay their respects.

In his autobiography entitled *In the Line of Fire*, Justice Deschênes wrote of his hope:

...to making the world a little better than if I had not lived...

Justice Deschênes, your wish has been granted.

[Later]

[Translation]

**Hon. Gérald-A. Beaudoin:** Honourable senators, Justice Deschênes was born on June 7, 1923, in Montreal, completed his classical studies at Collège Grasset, and took his law degree at the University of Montreal (LL.M. 1946). He received the Governor General's Award for Excellence, several honorary doctorates in law, and a number of other awards during his lifetime. He was made a Companion of the Order of Canada in 1993.

I attended Justice Deschênes' lectures at the University of Montreal. He taught civil procedure and always expressed himself with great clarity.

A private sector lawyer, a talented litigator, a Superior Court justice, an Appeal Court justice, and Chief Justice of the Superior Court for ten years, he was without a doubt one of our greatest legal minds.

He found the time to write many highly interesting books such as *The Sword and the Scales*, *L'école publique confessionnelle au Québec*, *Conflits linguistiques au Canada 1968-80*, *Justice et pouvoir: A Passion for Justice*, and his memoirs entitled *In the Line of Fire*.

He took part in the work of the International Court of Justice in The Hague and was a member of the International Criminal Tribunal for the former Yugoslavia. He was very active internationally.

I wish to pay tribute to the learned symposia he organized in Canada and abroad on international judicial independence and on rights and freedoms.

He was, without a doubt, a remarkable person, an incredible hard-working man, and a very cultured man. Rarely in my lifetime have I seen anyone as energetic or trenchant.

To all members of his family I extend my deepest sympathy. We have lost a great jurist.

**The Hon. the Speaker pro tempore:** Honourable senators, the period allocated for Senators' Statements has expired. I shall recognize two other senators who had indicated their intention to speak.



**Hon. Serge Joyal:** Honourable senators, I should like to add my words to those of my colleagues the honourable senators Meighen and Beaudoin, concerning the passing of Justice Jules Deschênes. I would remind my colleagues that, 24 years ago, I was a petitioner before Justice Deschênes against Air Canada and Transport Canada in connection with interpretation of the provisions of the Official Languages Act.

My colleagues in this house, particularly the honourable senators Gauthier and Prud'homme, who sat with me in the other place, will recall the historical importance of this case.

Justice Deschênes had headed a fact-finding commission which travelled to Paris and Brussels in order to carry out on-site verifications of how their control towers operated using, in addition to French, English, obviously the international language of air navigation.

During the proceedings, which took a number of months, Justice Deschênes showed himself to be a fair, attentive and humane man, one concerned particularly with ensuring that one of the fundamental principles underlying the structure of Canada, that is the equality of both official languages, was respected not only in spirit but also in the letter of the law.

This is perhaps the area in which Justice Deschênes made the greatest contribution to the legal heritage he has left to us, the ability to read into the texts and legislation passed by us the underlying spirit behind the Canadian constitutional framework.

I certainly wish to join with my colleagues in paying tribute to him and to his family, and in thanking them for making it possible for such a great jurist to enlighten this Parliament.

[English]

**MS CLAIRE BIDDULPH  
MS NICOLE METHVEN  
MR. TREVOR STEINBURG  
MR. LARRY UTECK**

#### CONGRATULATIONS ON RECENT ACCOMPLISHMENTS

**Hon. Wilfred P. Moore:** Honourable senators, I rise today to speak in recognition of Claire Biddulph and Nicole Methven, two Master of Business Administration students at Saint Mary's University in Halifax. They won the top prize, and \$15,000, at the Canadian Imperial Bank of Commerce — Ivey MBA National Business Plan Competition, held at the University of Western Ontario from March 31 to April 2. Next, they represented Canada in the International MOOT CORP Business Plan Competition, held in Austin, Texas, from May 5 to 7, where they won the Fast Pitch Competition.

Honourable senators, as part of this contest, these young women had 15 minutes to present their business plan for DementiaGuide.com, a disease management site soon to appear on the World Wide Web that will provide doctors, patients and caregivers with up-to-date information about Alzheimer's disease.

I also wish to recognize Trevor Steinburg, coach of the varsity hockey Huskies. On March 26, this "Santamarian" was awarded the Canadian Interuniversity Athletic Union Coach of the Year for the second straight year, making him the first coach in CIAU history to win this prestigious award twice in a row.

Our congratulations to Coach Steinburg are to be shared by him with Larry Uteck, Athletic Director at Saint Mary's University, and a man whose leadership qualities have created an atmosphere that breeds a successful merger of academics and athletics of national stature.

#### NEWFOUNDLAND

##### RESULTS OF BY-ELECTION IN ST. JOHN'S WEST AND CONGRATULATIONS TO MR. LOYOLA HEARN

**Hon. Ethel Cochrane:** Honourable senators, I should like to draw your attention to the results of yesterday's by-election in St. John's West.

**Some Hon. Senators:** Hear, hear!

**Senator Cochrane:** The Conservative caucus will be welcoming a new member of Parliament, Mr. Loyola Hearn, when we meet tomorrow. As I am sure honourable senators know, Mr. Hearn defeated a spirited challenge from the NDP. The combined campaign efforts of Premier Tobin and a parade of federal cabinet ministers produced a third-place finish for the Liberal candidate. As for the Canadian Alliance, they gathered a few more votes than the candidate for the Extreme Wrestling Party, even though they ran a well-known candidate from Newfoundland by the name of Frank Hall. I am told they had a great organization, but still they could only muster 4.1 per cent of the total vote. That is an indication of where the Canadian Alliance stands in Newfoundland.

• (1420)

Honourable senators, Loyola Hearn will bring a wealth of experience in Newfoundland politics, including his experience as a provincial cabinet minister, to his duties as member of Parliament representing St. John's West. He will be a tremendous asset to our Conservative caucus and a hard-working supporter of Conservative policies. Loyola Hearn's victory yesterday reaffirms Conservative support in Newfoundland and the strength of the Conservative Party in Atlantic Canada as we head closer to the next federal general election. When that time comes, he will stand beside the Right Honourable Joe Clark in leading our election team in Newfoundland.

#### DISTINGUISHED VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before we go on to other items on the Order Paper, I should like to draw your attention to the gallery and some former senators who are visiting with us today. We have former senator Thériault, former senator Stanbury and Mrs. Stanbury, and former senator Johnstone.

On behalf of all your colleagues, I wish you welcome back to the Senate.

## ROUTINE PROCEEDINGS

### PRIVACY COMMISSIONER

#### ANNUAL REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table the annual report of the Privacy Commissioner for the period ended March 31, 2000.

[Translation]

### CANADA TRANSPORTATION ACT COMPETITION ACT COMPETITION TRIBUNAL ACT AIR CANADA PUBLIC PARTICIPATION ACT

#### BILL TO AMEND—FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-26, to amend the Canada Transportation Act, the Competition Act, the Competition Tribunal Act and the Air Canada Public Participation Act and to amend another Act in consequence.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading on Thursday, May 18, 2000.

[English]

### LEGAL AND CONSTITUTIONAL AFFAIRS

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Lorna Milne:** Honourable senators, I give notice that tomorrow, Wednesday, May 17, 2000, I shall move:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit on Wednesday, May 17, 2000, at 3:30 in the afternoon, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE

**Hon. Michael Kirby:** Honourable senators, I give notice that on Wednesday, May 17, 2000, I shall move:

That the Standing Senate Committee on Social Affairs, Science and Technology have the power to sit on Wednesday, May 17, 2000, at 3:30 p.m., even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

• (1430)

## QUESTION PERIOD

### SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE— REQUEST FOR EXPLANATION

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, my question is directed to the Chairman of the Standing Senate Committee on Social Affairs, Science and Technology, who has just given notice of motion that this committee will be sitting. Can the Chairman provide an explanation as to the committee's pressing business?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, we have momentarily lost the presence of the Chairman. I shall ask one of my colleagues to retrieve him. He should be back momentarily.

### LEGAL AND CONSTITUTIONAL AFFAIRS

#### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF THE SENATE— REQUEST FOR EXPLANATION

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, perhaps I could ask a question of the Chairman of the Standing Senate Committee on Legal and Constitutional Affairs, who has also presented a notice of motion for his committee to sit while the Senate is sitting. Could the honourable senator give us an indication as to the committee's business plan for tomorrow afternoon?

**Hon. Lorna Milne:** Honourable senators, the Legal and Constitutional Affairs Committee has a very full agenda tomorrow afternoon. Appearing before us will be the Evangelical Fellowship of Canada; Focus on the Family (Canada); a senior researcher on public policy; the National President of Women for Life, Faith and Family; the President of the Toronto District Muslim Education Assembly; the Metropolitan Community Church of Toronto; the United Church; and the Naskapi Nation. These witnesses have all been arranged and have agreed to appear.

**Hon. Anne C. Cools:** Could I ask the Chairman, Honourable Senator Milne, a question? She read a list of witnesses, but I did not hear the name of Gwen Landolt of Real Women. Could the honourable senator tell us when Ms Landolt will be appearing?



**Senator Milne:** We have been attempting to get Ms Landolt to appear. She has had the same two weeks' notice as the other witnesses on this list. She is not available to appear tomorrow. We asked her if she could send a replacement or submit a brief to the committee. I understand that she has refused to do this. We are anxious to hear from Real Women.

**Senator Cools:** I should hope that the committee will find a way to hear Ms Landolt. She is an eminent lawyer from Toronto who is very well informed in this particular area. I would ask the steering committee and Senator Milne to give due attention to hearing her. A brief would be insufficient.

**Senator Kinsella:** Honourable senators, my supplementary question is directed to the Chair of the Standing Senate Committee on Legal and Constitutional Affairs.

Could the honourable senator advise us whether her committee has notified the potential witnesses that the committee will not sit before 3:30 p.m.? I understand the need of the chairs of committees to be able to plan their committee's work, but traditionally committees may not sit until the Senate rises. Could the honourable senator confirm that the witnesses understand how the system works?

**Senator Milne:** I am quite sure that the clerk of the committee is on the telephone right now to these people. They had been booked to start at 3:30 p.m., the normal starting time for the committee. I am sure they will all be informed of what may or may not happen tomorrow.

## INTERNATIONAL TRADE

### WORLD TRADE ORGANIZATION—NEGOTIATIONS ON AGRICULTURAL SUBSIDIES—GOVERNMENT POLICY

**Hon. A. Raynell Andreychuk:** Honourable senators, I was very pleased to see that Minister Pettigrew replied to the report of the Standing Senate Committee on Foreign Affairs entitled "Europe Revisited: Consequences of Increased European Integration for Canada." I hope this bodes well that other ministers will reply quickly, as he did, to our report. The advice we give in our reports should be considered because many hours are involved and many experts appear before us.

What troubled me was recommendation 3, where we suggested that the federal government formulate an aggressive political strategy — and we did stress political strategy — in advance of the World Trade Organization's round of multilateral trade negotiations. The minister's reply seems to be rather general again, where he says that Canada will use WTO negotiations to vigorously pursue specific negotiating objectives, that we will continue to work with the Cairns Group, and that we will take every opportunity. Again, the reply is general.

I previously asked this question and I shall ask it again: When will we receive a specific strategy, an innovative political strategy, with respect to the WTO and agriculture in particular?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for once again raising this important issue. I am pleased that Minister

Pettigrew has responded, although obviously not in quite as much detail as the honourable senator would wish.

The political strategy within the WTO on this topic often is not conducted on a broad public stage but between individual countries and multilaterally with groups of countries. I can inquire as to what extent the minister is prepared to share specific political tactics or strategies. My suspicion is that his remarks at this stage were deliberately general, but I shall pursue that on behalf of the honourable senator.

**Senator Andreychuk:** Honourable senators, I do not think that it was ever intended that these be backroom strategies. By "political," it was intended that the issue be taken out of the bureaucracy and moved higher on the agenda into the cabinet. Strategically, agriculture and the WTO are very important. By "political strategy," many years ago the Cairns Group, very publicly and open, came together with key objectives of how to pursue agricultural reform. I presume that what we are looking for now is some innovative strategy, particularly when the government has indicated that this issue was high on its agenda, has put in Mr. Marchi over and above key professional expertise in the WTO, and has said that it is ready to use some political muscle. When will we benefit from Mr. Marchi's presence there, having put Mr. Weekes in another position, and when we will get a specific strategy? Months have gone by and agriculture is not getting the fair attention it should.

**Senator Boudreau:** I can assure the honourable senator that the issue of the WTO and the approach by the European Community, the United States and others with their subsidy levels is a matter of serious concern for the government. Without disclosing specifically any confidences within the cabinet, it has been a topic of frequent discussion and attention by Minister Pettigrew specifically, but also by other colleagues, including the Minister of Agriculture, and, quite actively, by Minister Goodale.

• (1440)

The honourable senator has made the point that the political strategy is not sufficiently shared in a public way. I shall simply convey those feelings and that viewpoint to Minister Pettigrew and other colleagues who have been very interested in this issue. We can only await their response.

I shall say, however, that one should not conclude that a political strategy does not exist or that activity is not taking place as we speak.

**Senator Andreychuk:** Honourable senators, I raised this matter in a previous question and asked for a written response. I trust Mr. Pettigrew, or someone else, will provide us with an answer.

When we were moving ahead with the land mine strategy, for example, every parliamentarian who travelled anywhere was given a briefing and a suggested mandate to further that very good goal. We are doing nothing to further agriculture. Yet, on any given day, somewhere in the world, there is some group that could make representations to some other parliamentarian to shine the light on this subject. That is my concern. I ask for an undertaking to get on with that strategy.

**Senator Boudreau:** Honourable senators, I certainly appreciate the honourable senator's wish to involve parliamentarians generally and, indeed, herself in this effort to move the WTO, the European Community and the United States to deal with the unsatisfactory agricultural subsidy imbalance which puts our farmers in Western Canada, in particular, at great disadvantage. Again, I give the undertaking that such a response will come forward from the minister and that I shall communicate the views of the honourable senator.

**Hon. Leonard J. Gustafson:** Honourable senators, there is a general feeling among farmers that the government has used the WTO as a scapegoat for dictating reality. Is that in fact the case?

It has come to the point where farmers will no longer accept the reasoning that we cannot do this or that because the World Trade Organization demands a certain criteria. When the Senate Agriculture Committee studied this whole area, we learned that we had acted like boy scouts in the negotiating process. In other words, we gave away the ship. Yesterday, this issue was raised before the Agriculture Committee again. Farmers are very concerned that the government is using the WTO as a scapegoat to do away with the responsibility that is theirs.

**Senator Boudreau:** Honourable senators, I must confess to the honourable senator I am not sure what he means by suggesting the government is using this concern as a scapegoat. The question of agricultural subsidies and the WTO's attempts to deal with those subsidies over the years have been a major challenge. In fact, if the Government of Canada could act unilaterally with respect to the WTO, I am quite certain that we would no longer have this problem.

However, the Government of Canada, in recognizing the difficult situation facing farmers in Western Canada, specifically, has acted in a substantial way over the last number of months with various initiatives. Most recent were the announcements with respect to grain transportation. We await the legislation to be introduced in the other place and, subsequently, before us in due course. This is simply the latest measure which is substantial in nature.

**Senator Gustafson:** Honourable senators, the minister makes a good point. With regard to grain transportation, it was felt that Canada had to give up the Crow to stay in line with world trade requirements. The fact is that that one decision cost farmers \$1 per bushel and took the profit out of agriculture, especially in the grain business. That is the point. Will cabinet allow this to continue, using that excuse as a shield from reality?

**Senator Boudreau:** Honourable senators, cabinet and the ministers most directly involved, in particular those I mentioned, continue to pursue every effort at the WTO to deal with this subsidy situation. As the honourable senator knows, the problem will not be resolved overnight. It has already gone on for some considerable period of time. However, that should not be interpreted as meaning that the government is not determined in its efforts to deal with it.

With respect to the transportation measures, I had occasion recently to be at a formal dinner, during which I sat with some

senior executives from a Canadian national railway company. They were vociferous in their views concerning the amount of assistance this new measure would mean to farmers and, one would guess, out of the hands of their shareholders. The recent measure is substantial. It will put considerable money into the hands of Saskatchewan farmers along with the other measures that have taken place. However, none of those programs should be interpreted as a substitution for the continuing effort to go after the WTO.

## AGRICULTURE AND FORESTRY

### POSSIBILITY OF COMMITTEE STUDY ON ISSUES FACING FARMERS

**Hon. John G. Bryden:** Honourable senators, I should like to direct a question to the Chair of the Standing Senate Committee on Agriculture and Forestry.

Do the Honourable Senator Gustafson and the members of the committee have any plans to undertake a comprehensive study and analysis of the agricultural situation, particularly in the West as it relates to those issues which he has had the opportunity to raise on a regular and continuing basis in this place?

**Hon. Leonard J. Gustafson:** Honourable senators, yesterday we received reports from British Columbia, Saskatchewan and Ontario regarding the crisis and the situation that exists in Western Canada and Canada in general. We are preparing to write a report. In fact, we will be hearing from the minister today.

One of the questions to which we will be seeking an answer from him is: What is the long-term program for solving the problem of commodity prices, something which could go on indefinitely? There must be a short-term answer, as well as long-term answer, to that question.

Today, as farmers are putting in their crops, some have come to me saying, "We do not know how we can possibly recover our input costs when we are putting in these crops at today's market prices."

It is amazing that they have as much stamina as they do to move ahead and put in a crop when they realize that they may have no return on their input costs. It is a serious question. The crisis is a national one at this time. It must be looked into. I could not agree more with the honourable senator.

**Senator Bryden:** Honourable senators, is the committee considering the whole issue of farming in the West, in particular or farming throughout Canada given that we are competing on a global basis? We are the chamber of sober second thought, the chamber which is supposed to take the time to do a thorough investigation of all aspects of a question. As the Chairman of the committee knows, voices in various parts of the land are saying that we are in a time of global change that will affect many of us. It surely is affecting farming, just as events have affected, for example, the fishing industry on the East Coast. Sometimes it is perhaps, not a sufficient answer to say that the situation is causing people to lose their homes.



• (1450)

We know that that sort of change causes people to lose their homes. Ask anyone from Newfoundland about the effects of global change on the huge fishing industry on the East Coast. It affects not just whether you put the crop in or whether you put the nets in this year; it affects whether the industry will continue and how it will continue. Some people, as you know, take the position that some of the land in the West being used for crops would be better used if it were put back to what it was doing earlier.

Honourable senators, there are many issues. I understand Senator Gustafson's answer. However, I was asking if this is not the time for a thorough analysis of that industry by a committee of this chamber — something far-ranging and far-reaching, not on whether we get the crop this year or next year or how many billions of dollars we should invest. There comes a point at which we simply, and I think he would agree, must make a total reassessment. Has the Chairman contemplated doing that? If not, would he consider raising that matter with his committee?

**Senator Gustafson:** Honourable senators, in fact the mandate the committee today is the future of agriculture in Canada. I, for one, am not ready to say that there is no future in agriculture. It would be a sad day for this country if we were at the point where we were saying that agriculture cannot continue to be a producer. The world needs food.

The big problem today is that the farmers are not getting a fair return a compared to others in the food chain. The processors and the rail companies are all showing profits. The banks are showing profits. Some of the processors are showing profits as high as 30 per cent. Meanwhile, farmers are showing a negative return on investments.

I was discussing earlier today with the deputy leader the fact that the value of farms has dropped by half. The country is facing a very serious national problem. The Governor General has come to the conclusion that she will visit rural Canada and speak to people in small towns and the farms to learn the severity of the situation.

The question really is: Is the government prepared to stand behind the farmers until things levels out? Commodity prices will come back. We have had ups and downs before. I have farmed all my life. We have had good times, and we have had difficult times. In the 1980s, I chaired the task force inquiring into the drought in Western Canada when we put up billions of dollars to save the farmers. The prices came back in the late 1980s, and the early 1990s were some of the better years that we have had. However, nothing has been done by the Government of Canada in the last seven or eight years about the safety nets that could have been put in place. Those safety nets must be put in place.

The honourable senator asked if there will be a farming industry in Canada. There will be.

**Senator Bryden:** Honourable senators, once again, I rise on a supplementary question, as I must keep trying to get an answer.

Let me try one more time. Has any consideration been given by the Standing Senate Committee on Agriculture and Forestry to launching an objective study on the issue? I am not referring to studies triggered solely by whatever the prices of the month happen to be or by a program that worked by putting billions of dollars into it 10 years ago? We used to do that, as I indicated, in the fishing industry as well. Does that still work, and if we just do that for another 10 years, will the problem be solved?

There are those people in the world, and some in this city, in the high-tech industry, who say that the global village is different and that we will need to be more thorough and perhaps more sophisticated and certainly very objective in our analysis if we are to compete.

Is there any possibility that the Agriculture Committee could take that sort of a long-term approach for the future as opposed to reviewing what worked in the past?

**Senator Gustafson:** Honourable senators, the reality is that the Agriculture Committee brought before it, I believe four weeks ago, a recommendation that we set up a special committee to look into the issue and make representations. Senator Sparrow recommended such a study. That was shot down in the committee, frankly, saying that the committee has already been studying the state of agriculture in Canada.

However, I agree with Senator Sparrow. I think there should be a special committee of the Senate on the state of agriculture in Canada, and probably some money should be spent investigating the outcome of the recommendations that would be made by such a Senate committee. I could not agree more.

## PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, I should like to introduce to you the pages that are here with us this week from the House of Commons.

Melanie MacGuire is from Windsor, Ontario. Melanie is enrolled in the Health Sciences Faculty of the University of Ottawa. She is majoring in Human Kinetics.

[Translation]

Éric Plamondon, on my left, is studying at the University of Ottawa. He is in political science in the Faculty of Social Sciences.

[English]

If you will pardon a parochial comment on my part, he comes from that wonderful part of Canada known as Winnipeg, Manitoba.

On behalf of all honourable senators, I hope you have a pleasant and interesting week with us here in the Senate.

## ORDERS OF THE DAY

### BUSINESS OF THE SENATE

#### **Hon. Dan Hays (Deputy Leader of the Government):**

Honourable senators, as we are now on government business, I am rising, as envisaged by rule 38 of our rules, to comment on discussions that I have had with the Deputy Leader of the Opposition, representing the other party in this place, with respect to our business.

We have come to an agreement with respect to a time for voting on Bill C-20 at second reading stage. I do not intend to say much more than that, although I shall move a motion. Senator Kinsella can comment or not.

The only other comment or observation I want to make is that we do have a busy schedule. We will probably sit late tonight. I shall be in discussion with Senator Kinsella on whether we not see the clock or whether we adjourn until eight o'clock as provided for in the rules.

#### **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—MOTION FOR ALLOTMENT OF TIME FOR DEBATE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, with respect to Bill C-20, pursuant to rule 38, I move:

That, pursuant to rule 38, no later than 3:00 p.m. on Thursday, May 18, 2000, any proceedings before the Senate shall be interrupted and all questions necessary to dispose of the motion of Honourable Senator Boudreau, P.C., for the second reading of Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference, shall be put forthwith without further debate or amendment, and that any votes on any of those questions not be further deferred: and

• (1500)

That if a standing vote is requested, the bells to call in the Senators be sounded for thirty minutes, so that the vote takes place at 3:30 p.m.

**The Hon. the Speaker:** Honourable senators, I understood from the Honourable Senator Hays that the Honourable Senator Kinsella wanted to make some comments. If I put the motion forward now, I shall not be able to hear the Honourable Senator Kinsella.

**Senator Hays:** I did not know that. Your Honour. You are correct. It is not a debatable motion. I certainly concur with you.

**The Hon. the Speaker:** I shall not put the motion forward then, and we shall hear from the Honourable Senator Kinsella at this time.

[Translation]

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I agree entirely with the explanation of Senator Hays. We had a first-rate debate on Bill C-20, at second reading stage. I should like to congratulate all the senators who have participated in the debate to date.

We raised a number of important principles relating to this bill. Our position is clear and open. We want a sophisticated debate on a subject affecting the life of the country. For this reason, other senators want to take part in the debate and will have the opportunity to do so on Thursday. I fully support the motion of Senator Hays.

[English]

**Hon. Lowell Murray:** Honourable senators, is it the intention of the Leader of the Government, who sponsored this bill in the Senate, to speak in closing the debate? If so, when does he plan to do that?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, yes, it is my intention to speak very briefly to close the debate at second reading. The timing of that will depend on the conduct of the matter by my deputy leader.

**The Hon. the Speaker:** If there are no further comments, is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

#### **SPECIAL SENATE COMMITTEE ON BILL C-20**

MOTION TO APPOINT—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Robichaud, P.C. (*L'Acadie-Acadia*):

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference;



That, notwithstanding Rule 85(1)(b), the committee be comprised of fifteen members, including:

Senator Joan Fraser  
 Senator Céline Hervieux-Payette, P.C.  
 Senator Colin Kenny  
 Senator Marie P. Poulin (Charette)  
 Senator George Furey  
 Senator Richard Kroft  
 Senator Thelma Chalifoux  
 Senator Lorna Milne  
 Senator Aurélien Gill;

That four members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee.

**Hon. Anne C. Cools:** Honourable senators, let me state at the outset that I oppose this motion for a special committee. I do not and I shall not support this motion. It is a sorry motion and it is a sorry proceeding. I oppose it because this motion intends to alienate me from membership on this special committee. This committee is being established to block the reference of Bill C-20 to the proper committee, namely, the Standing Senate Committee on Legal and Constitutional Affairs, of which I am a member. This motion intends to oust certain senators, particularly myself, from Senate committee study of Bill C-20.

Honourable senators, I object strenuously. This motion is both a robber and a thief. It purports to rob Parliament and the Senate of their sovereignty. It seeks to rob the Senate of its own constitution. Further, this motion seeks to rob me, a senior senator, of my right, earned over long years of dutiful service, to diligently participate as a member of the Senate committee considering Bill C-20. This motion is a coward as well. It does not wish to submit the study of Bill C-20 to certain senators, myself included.

Further, this motion seeks to alter the composition of the committee to which Bill C-20 will be committed for study. It seeks to alter and overturn the constitution of the Senate, which, by resolution on November 4, 1999, had already determined the composition and the members of the standing committee deemed by the Senate to be the most competent committee to study such bills.

Honourable senators, in opposing this motion, I shall speak as a Liberal senator from Ontario whose motto is "loyal she began and loyal she remains," a belief that is anchored in Ontario

liberalism developed from the work of the Upper Canadian Reformers simultaneously as responsible government developed in Canada. A strong plank of Ontario liberalism was the two definite elements, being a strong assembly, later a strong parliament, and a non-politicized court whose judges did not control and rule the legislatures. Bill C-20 violates those two foundational notions of liberalism in Canada. The bill's title reveals this. The title is, "An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference." The Law of Parliament, the High Court of Parliament, eschews its own alienation from its own powers and eschews its own subordination to any court, particularly an inferior court that it created by its own enactment.

Honourable senators, in opposing this motion, I shall speak as a black person, as an Afro-Saxon born in the British West Indies, in Barbados, an island that has the second oldest legislative assembly in the British Empire, now Commonwealth. I shall also speak as an immigrant to Canada, who came to Montreal, Quebec, at age 13. Like several hundreds of thousands of Quebec anglos, I am in exile from Quebec. I departed Quebec, driven by a lack of opportunity for black-skinned anglophones, also immigrant born and also non-French Canadian. I am a refugee to loyal Ontario from a peculiar Québécois notion called "pure laine." — pure wool. Because of my British colonial experience, the historical ties between my birthplace, Barbados, the United States southern Confederacy, and my understanding of the American Civil War and its brutal settling of secession and slavery, I am especially interested in sovereignty and secession, or the separation or dividing of a country.

On October 30, 1995, the night of the last Quebec referendum on secession, the former Parti Québécois premier of Quebec, Jacques Parizeau, as reported in the *Montreal Gazette*, *The Toronto Star* and other newspapers the next day, said:

Remember, three-fifths of us who are what we are voted Yes....It's true we have been defeated. But by what? By money and by the ethnic vote.

I am one of those ethnics.

I do not usually talk about race, honourable senators, but I shall begin to talk about it now. My reaction to those words was extremely strong. It was reminiscent of my very powerful reaction, several decades ago, when I first read Thomas Carlyle's December 1849 notorious essay entitled "Occasional Discourse on the Nigger Question." That essay was repudiated by the learned John Stuart Mill in his essay entitled "The Negro Question." Carlyle's essay shocked me terribly because I did not know people could say such things about fellow human beings.

Honourable senators, I oppose this motion because it asks the Senate to agree to the proposition that the Senate has no confidence in certain members of the Standing Senate Committee on Legal and Constitutional Affairs, myself included, and to bypass them. It offends my personal sovereignty as a senior member of that bypassed committee and also the sovereignty of that committee.

• (1510)

I turn now to the question of sovereignty, the sovereignty of Parliament, Canada, and the Senate. Sovereignty is that peculiar condition of a nation determined by and vested in its sovereign, Canada's being Her Majesty Queen Elizabeth II. Sovereignty is a political and parliamentary fact buttressed by the force of arms. The sovereignty of Canada is a constitutional one and was attained in and by a constitutional monarchy. It is indivisible and inalienable. Sovereignty is allegiance to that which and whom is sovereign. It is built on loyalty, honour, and the valour of citizens to defend, to fight, and even to die for it. The plunderer of sovereignty is treason. Treason is a political offence.

Honourable senators, I shall trace now the constitutional history of treason in Canada and in the United Kingdom, and Canada's constitutional position on treason. However, first I shall cite a poignant epigram found in an unsourced footnote in Sir James Fitzjames Stephen's 1883 *A History of Criminal Law of England*. Mr. Stephen wrote, at page 241:

Treason can never prosper — what's the reason? If it does prosper, none dare call it treason.

That was a footnote by Sir Stephen.

Honourable senators, Manitoba's Métis leader Louis Riel was an elected member of the House of Commons of Canada who never took his seat because he was twice expelled, in 1874 and 1875. The 1875 expulsion was on a resolution moved by then Liberal prime minister Alexander Mackenzie. Later, in 1885, Riel was charged and hanged for treason under the United Kingdom's Treason Act of 1351. That United Kingdom act was part of Canadian law. The tragic and terrible hanging of Riel still haunts the national conscience and needs examination.

Again, in 1947, another member of the House of Commons, Fred Rose, Member of Parliament for Cartier, Quebec, having been convicted of certain forms of treason redefined under the Official Secrets Act, was sentenced and imprisoned. He, too, was evicted by a resolution moved by then Liberal prime minister William Lyon Mackenzie King.

Parliament has particular obligations and definite powers in respect of treason and treasonous conduct. Treason is a peculiar and unique offence. It is to be distinguished from any other offence. The offence of treason rests on infidelity, on unfaithfulness. Treason is not a simple crime, not simply espionage, or larceny, or rioting, or murder, or violence. The complex and distinct offence of treason rests in perfidy. It rests in disloyalty to the political community, that is, to the sovereign, cabinet, assembly, and to subject citizens. Treason is a betrayal of high obligations, of the high, noble and honourable duties. Treason's essence is in the violation of allegiance to Queen and country. Conversely, treason impairs the protection owed by Queen and Crown to subject citizens. *Halsbury's Laws of England*, Fourth Edition, in a section entitled "Offences against the Government and the Public," under a heading entitled

"Offences Against the Sovereign," defines treason, stating, at paragraph 77:

Duty of Allegiance. The essence of the offence of treason lies in the violation of the allegiance owed to the Sovereign.

Further, Jowitt's *Dictionary of English Law*, Second Edition, confirms this, saying, at page 1799:

Treason or *lèse-majesté* is an offence against the duty of allegiance, and is the highest known crime, for it aims at the very destruction of the commonwealth itself.

Treason is most complex. There are high treasons and petit treasons. Perjury used to be a petit treason. Treason is the highest crime because it represented descent to the lowest form of behaviour, treachery, of the high purposes, being the honour of the sovereign.

Honourable senators, I oppose this motion because it asks me to agree to my own negligence, to neglect my sworn duty to give my best industry and study to Bill C-20, which I should be able to do as a member of the Standing Senate Committee on Legal and Constitutional Affairs, as I was put on that committee by motion last November. For me, such negligence is an abandonment of my sworn duty — and I mean that; for me to agree is to abandon my sworn duty — and injures my oath of allegiance to Queen and country that I took here in this Senate.

I move now to those oaths of allegiance to the sovereign in Canada. Senators know that Canada's loyal existence was born in self-protection against American military aggression and American wishes to annex Canada, particularly Upper Canada's western bountiful lands. The Dominion of Canada was confederated with due consideration, much anxiety, to the American Revolution, to its Civil War, and to allegiance and treason.

I shall now consider the meaning of allegiance, the duty of allegiance, and its history in Canada, and the requirement of Parliament's allegiance. I shall survey the oaths of allegiance in Canada. Since inception, these oaths have been statutory enactments in distinct provisions of several constitutional acts.

First, let us look at the Oath of Allegiance that we senators here take. All members of Parliament, both senators and commoners, are ordered by the British North America Act, 1867, section 128, to swear the oath of allegiance. Section 128 states:

Every Member of the Senate or House of Commons of Canada shall before taking his Seat therein take and subscribe ... the Oath of Allegiance contained in the Fifth Schedule to this Act;

Our oath is based on the BNA Act's Fifth Schedule, and states

I ... do swear, That I will be faithful and bear true Allegiance to Her Majesty...



Honourable senators, that is not a hymn or a sentimental piece of poetry. That is the current law of Canada. Members of Parliament, ministers, high office-holders, and judges must take this Oath of Allegiance. An oath is a solemn declaration made by the invocation of a person's deity or conscience. Allegiance to the sovereign, Her Majesty, is an absolute condition of membership in this Parliament. It is a constitutional requirement. That oath is the law, an express enactment of the British North America Act, 1867. Honourable senators, that oath was conceptualized and was legally and constitutionally laid out by Sir John A. Macdonald and the Fathers of Confederation. It is a very short oath, much shorter than its predecessor oaths in predecessor constitutional acts. Its brevity was possible by the accompanying enabling sections of the BNA Act.

Allegiance is enacted by the express provisions of the constitution acts of Canada from 1774 until now. These constitutional acts enacted the oaths of allegiance for members of the assemblies and the councils. These acts, the Quebec Act, 1774, section VII, the Constitutional Act, 1791, section XXIX, and the Union Act, 1840, section XXXV, enacted their lengthy oaths of allegiance in substantially the same words.

All these Canadian constitutional acts enacted the duties of the assembly members and office-holders to be vigilant and diligent against treason. These constitutional oaths of allegiance enacted personal, parliamentary, and constitutional prohibitions against treason. The intention was to protect parliamentary institutions and to bar treasonous ideas, concepts, and persons from participation in Parliament and from advising the sovereign in passing statutes, acts.

Honourable senators, for those of us who do not know, the word for a passed bill, an act, means an act of the King or Queen in Parliament or assembly.

I shall cite one of those three earlier oaths, mainly the act uniting Upper and Lower Canada, the Union Act, 1840. Its section XXXV said:

I, ... do sincerely promise and swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria, as lawful Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province of Canada, dependent on and belonging to the said United Kingdom; and that I will defend Her to the utmost of my Power against all traitorous Conspiracies and Attempts whatever which shall be made against Her Person, Crown, and Dignity; and that I will do my utmost Endeavour to disclose and make known to Her Majesty, Her Heirs and Successors, all Treasons and traitorous Conspiracies and Attempts which I shall know to be against Her or any of them; and all this I do swear without any Equivocation, mental Evasion, or secret Reservation, and renouncing all Pardons and Dispensations from any Person or Persons whatever to the contrary. So help me God.

These enacted oaths demanded allegiance and absolutely condemned treason by the houses of assembly, by the councils,

by ministers and governors, and yes, by judges. In the earlier years of this country, judges sat in the chambers, the legislative councils of Upper and Lower Canada.

• (1520)

Honourable senators, I cannot support this motion. In addition to the oaths, these constitutional acts directed other prohibitions regarding qualifications to vote and eligibility to stand for election, again directed at barring and mortifying treason from the legislative chambers. The Constitutional Act, 1791 also enacted another section governing the comportment of persons eligible to vote and to stand for election to the assembly in any election. Its section XXIII said, in part:

And be it also enacted by the Authority aforesaid, That no Person shall be capable of voting at any Election of a Member to serve in such Assembly, in either of the said Provinces, or of being elected at any such Election, who shall have been attainted for Treason or Felony in any Court of Law within any of his Majesty's Dominions...

Further, until 1840, candidates for election to the assemblies in Upper Canada who had resided in the United States of America swore yet another oath, which was a provision in an act about the election of members to the house of assembly and the qualification of voters and candidates at such elections. That 1824 act was 4 George IV, Chapter 3. Its section VIII said, in part:

I ... do sincerely and solemnly swear, that during my residence in the United States of America, I have not taken or subscribed any oath of abjuration of allegiance to the Crown of Great Britain; and further, that during my said residence, I have not held the office or appointment of Senator, or Member of the House of Representatives of the said United States ...

Honourable senators, I oppose this motion. The Senate committee composition is not the whim, fancy or convenience of the government. Honourable senators, legislative assemblies and legislative councils and their members could not countenance treason and were not available or open to treason in any of its forms.

**The Hon. the Speaker:** Honourable Senator Cools, I regret to interrupt you, but your 15-minute speaking period has elapsed.

Is the honourable senator requesting leave to continue?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, might I propose an extension of time of half an hour for Senator Cools to complete her remarks?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** The honourable senator who is requesting leave —

**The Hon. the Speaker:** I am sorry, Honourable Senator Hays, I could not hear your comment.

**Senator Hays:** Honourable senators, the time is up for Senator Cools' speech. Honourable senators will recall that we have had exchanges on this before. While I do not know the extent to which one can speak of rulings without offending any rule of the Senate, the ruling, as I interpreted it, on this issue indicated that any senator could propose a time limit on leave to extend time. In that context, I should like to suggest, honourable senators, that we extend additional time to Senator Cools of 30 minutes.

**Senator Kinsella:** Honourable senators, I should like to have clarity on this. It seems to me that the honourable senator who is speaking and whose time has run out is the senator who would request leave, if indeed that senator wants leave. Maybe that senator does not want leave to continue. However, if that senator requests the leave, surely that is the person who would know how much more time is needed. It seems to me that the honourable senator would rise, pursuant to the ruling, and request 5, 10, 15 minutes, or *sine tempore* time. I cannot see how other honourable senators can get up and purport to speak for the senator who is seeking leave. The senator who seeks leave is the senator who would know what he or she is seeking leave for.

**The Hon. the Speaker:** Honourable senators, perhaps I could refer Honourable Senator Kinsella to the ruling I made on May 11. He will find that ruling in the *Journals of the Senate*, and the conclusion is at page 593. Under that ruling, it was clear that a senator who is speaking may request leave asking for a certain amount of time but that another senator, in this case Senator Hays, before granting leave, may say, "Yes, I am prepared to grant leave for 30 minutes." That is the condition on which Senator Hays agrees to grant leave. If it is accepted, then, at 30 minutes, we will interrupt the honourable senator who is speaking. If it is not accepted, then no leave is granted.

**Senator Kinsella:** Honourable senators, for future reference, it will be helpful to understand how this will work. What happens if another senator says, "No. I am prepared to give 40 minutes"? Which time period will apply? Will it be the shorter amount of time that a senator, other than the senator who is asking for leave, mentions or the longer amount of time?

**Senator Hays:** Honourable senators, I note that the ruling provided for a brief exchange on the matter. I perhaps was ahead of Senator Cools. I assumed that she had asked for leave. If she had not, I apologize.

Perhaps the most sensible way of dealing with it would be, as we do in many cases of requests for leave, to ask the senator asking for leave to explain why he or she wants leave. On the basis of that explanation, we could then make a determination as to what leave should be given or should not be given.

On Senator Kinsella's issue of what happens if one says 30 minutes and one says 40 minutes, it seems to me that the question answers itself, in that the shorter time is what there is agreement on, because the longer is inclusive of the shorter.

With that, honourable senators, I shall let Senator Cools ask for leave. We shall do this correctly.

**Senator Cools:** Honourable senators, since this debate has begun, perhaps I could find out on what authority or on what rule

of the Senate such a ruling is based. Perhaps I could find out from Honourable Senator Hays.

**Senator Hays:** Honourable senators, does the honourable senator want to know on what rule His Honour's ruling is based?

**Senator Cools:** I find it curious that, in the middle of a particular senator's speech, other senators can rise and make proposals. My understanding is that parliamentary proposals should take the form of motions. I am speaking to a motion.

As Honourable Senator Hays knows, I am very supportive of him, but I am just asking him, since he was making this particular proposal based on a ruling, what rule of the Senate was being enforced in that ruling.

**Senator Hays:** Honourable senators, the *Rules of the Senate* provide, without referring to the specific number, for time for debate on motions, that amount of time being 15 minutes. There are other provisions for certain speakers and so on. However, that is the basis of the interruption at 15 minutes to say the time is up. We have had some exchanges on this, and perhaps this is a useful opportunity to clarify what would be a good procedure on the basis of His Honour's recent ruling.

I think I stood too quickly and have thereby prompted a response. The comment was properly made, I think, that the person speaking should indicate whether or not he or she wishes leave to continue beyond the time provided for in the rules.

In terms of His Honour's ruling, I believe the rules also provide for Speakers' rulings, as do the texts dealing with parliamentary rules, and that is what I shall rely on as the basis for Speakers' rulings, which have been the tradition as long as I have been here. I shall take my seat and trust that the process of granting leave will begin properly with the honourable senator's request for leave.

**Senator Cools:** Very well, honourable senators, may I have leave to continue?

**Senator Kinsella:** Yes.

**Senator Hays:** Honourable senators, in response to Senator Cools' request for leave, I propose that we give leave for her to continue with her remarks for a further 30 minutes.

**The Hon. the Speaker:** Is leave granted, honourable senators, for Honourable Senator Cools to proceed for a further 30 minutes?

**Hon. Senators:** Agreed.

**Senator Cools:** Honourable senator, it is a very interesting question as to which leave is superior, the first leave that was granted to me to continue or the leave that was granted for the other request. It would be very interesting to know which takes priority.

**The Hon. the Speaker:** I am sorry, no leave was granted. I did not put the question. I asked you: Are you asking for leave?



**Senator Cools:** I made the request.

**The Hon. the Speaker:** But I did not proceed to ask, "Is leave" —

**Senator Cools:** You did.

**The Hon. the Speaker:** Honourable Senator Cools, I am sorry, the Speaker is standing. Will you be please be seated?

• (1530)

Honourable Senator Cools, when I said that your time has elapsed, you stood and you said something I could not hear. When I stand, the microphones are cut off. At that time, I asked, "Are you requesting leave?" Senator Hays proceeded to get up and there was further debate, but at no time did I say, "Is leave granted?" Senator Hays has proposed to give leave for a further half hour and I asked, "Is leave granted?" It was granted and you may proceed.

**Senator Cools:** Very well. My recollection of the facts is that I asked for leave very clearly and that leave was given. Then Senator Hays rose and then asked for leave for half an hour on my behalf and that was also given. I thank honourable senators.

**The Hon. the Speaker:** Honourable senators, to clear up the matter, just because an honourable senator asks for leave and someone says yes does not mean leave is granted. The Speaker must ask the Senate whether leave is granted. Without that permission, there can be no leave. It is the Senate that makes that decision on the question.

**Senator Cools:** Honourable senators, these constitutional acts governed both the qualifications for membership in and the actual behaviour of members in both houses, the assembly and the council. The Union Act 1840's other sections enacted strong measures against members who were adjudged to be treasonous. Its Section VII said:

And be it enacted, That if any Legislative Councillor of the Province of Canada shall...be attainted of Treason, or be convicted of Felony or of any infamous Crime, his Seat in such Council shall thereby become vacant.

Some of these words are repeated verbatim in the British North America Act, 1867 enactments about our Senate. The BNA Act's Section 31.(2) enacted disqualification in the Senate for swearing an oath of allegiance to a foreign power and Section 31.(4) enacted disqualification for treason. The BNA's Section 31 enacts that the place of a senator shall become vacant in certain instances. Borrowing the words of the Union Act 1840 just quoted, it enacts the instance of treason. Section 31.(4) says:

If he is attainted of Treason or convicted of Felony or of any infamous Crime:...

I ask honourable senators to reflect on these words, disqualification of a senator "attainted of treason." I shall now

explain the relationship of this section to the earlier pre-1867 constitutional acts.

Honourable senators, all Canadian constitutional acts, all assemblies, and the Parliament of Canada have always condemned treason and barred treasonous activities and persons from their bodies. About disqualification, the real difference in these constitutional acts from 1774 to 1867 and the British North America Act, 1867 is the fact that in those years, the houses of assemblies and the councils together were simple legislatures. They were not parliaments, and did not possess the full plenary, sovereign powers of a parliament. These legislatures had limited powers. In both Upper and Lower Canada there was civil conflict, even rebellion, about this insufficiency. Upper Canadian Dr. William Warren Baldwin worked on this, as did William Lyon Mackenzie. So did Robert Baldwin. These Reformers wanted strong assemblies. The Union Act 1840, which followed Lord Durham's Report, provided a limited type of responsible government. In that act, the United Kingdom Parliament still denied these legislatures the plenary powers of a parliament, in particular, the full range of the ancient Law of Parliament, the *Lex Parliamenti*, the ancient judicial and inquisitorial powers of parliament. This lack in sovereign powers had fuelled the rebellions of 1837 in Upper and Lower Canada. This problem had dogged the Colonial Office and in 1867 the United Kingdom Parliament settled it.

However, honourable senators, the United Kingdom Parliament corrected this at Confederation in 1867 by its enactment of the British North America Act, 1867. In Confederation, the United Kingdom Parliament gave the Dominion Parliament the plenary powers of both the modern and ancient parliament.

Honourable senators, this had been the wish of the Father of Confederation and first Prime Minister of Canada, Sir John A. Macdonald, who had full knowledge of these questions. Sir John A. Macdonald would be quite surprised to learn that the Supreme Court of Canada has declared that the Constitution of Canada is silent on secession, particularly as he was one of the actual drafters of the BNA Act, and he is also accredited with having drafted 50 of the 72 Quebec Resolutions that led to Confederation. He was a masterful drafter and in his drafting wrote no silence on secession into the BNA Act. The BNA Act created a Dominion Parliament with these full plenary powers, the powers of a sovereign parliament, and named its lower house after the United Kingdom's House of Commons. In addition, by its express provision, Section 18 gave the Parliament of Canada the judicial powers of a parliament as the High Court of Parliament. Section 18 states, in part:

The privileges, immunities, and powers to be held, enjoyed, and exercised by the Senate and by the House of Commons,...those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom...

In addition to receiving many United Kingdom acts, the BNA Act Section 18 also received into Canada the United Kingdom's ancient law of the ancient parliament called the *Lex et consuetudo Parliamenti*, the Law of Parliament, of which the courts are ordered to take notice judicially. This ancient and undoubted law included the powers and privileges of parliament to adjudicate and sentence its own members or other high persons, or anyone, for treasonous activities. It enacted impeachment and attainder by parliamentary proceeding, particularly for its own members and for all those so powerful as to be incapable of trial in the ordinary courts. Impeachment is trial by the High Court of Parliament. Bills or acts of attainder legislate the results of parliamentary proceedings including conviction, sentence, disinheritance of titles, loss of rights, and even loss of life.

Honourable senators, Section 31(4), Section 18, and the Oath of Allegiance provisions of the British North America Act, 1867 are the current law. The BNA Act, for sound reasons, enacted attainder and impeachment in this Upper Chamber for treasonous senators or senators adjudged of treason. The BNA Act received the Law of Parliament, *Lex Parliamenti*, into Canada and also enacted certain of its aspects. The BNA Act intended harsh consequences for treasonous senators. Therefore, the Senate, in a Senate proceeding, could attain a senator for treason. Attainder for treason has some stern results. The British North America Act, 1867 gave the Parliament of Canada a superintendence over treason, and an especial role to the Senate. Honourable senators, treason is what the Parliament of Canada says treason is.

Honourable senators, I oppose this motion because I do not support the contention that the BNA Act is silent on secession, and that this fact, after 130 years, has only suddenly now been revealed. The BNA Act's express provision provides no basis for Bill C-20, and consequently provides no parliamentary basis for a motion to establish a special committee on Bill C-20.

The Supreme Court of Canada in its August 20, 1998 opinion in the Reference re: Secession of Quebec said that the Constitution of Canada is silent on secession. This opinion is misleading and menacing. The British North America Act was not silent on secession. It was virulently opposed to secession. Its express provisions forbid secession. The act viewed secession as treasonous. This BNA Act treated secession, separation, disunion or national dismemberment as the political and parliamentary crime of treason, more than the criminal offence of treason. The British North America Act, 1867 is not silent on secession. The Supreme Court of Canada was silent on treason and silent on Parliament's enacted, also ancient, duty against treason. Treason, the parliamentary offence is in force in the Constitution Act, 1867 and in the Law of Parliament. By the BNA Act, disunion, dismemberment, and the dismantling of Canada was treason. The BNA Act by express provisions conferred on the Parliament of Canada the duty of superintendence over treason, over the union of Canada and over Canada's sovereignty and existence as a nation, a superintendence over Canada's indivisibility.

Honourable senators, I oppose this motion because it asks me to be wilfully blind to the law and ignore the BNA Act's express enactments forbidding the disunion of Canada.

I move now to the BNA Act's provisions about superior court judges.

• (1540)

Section 99.(1) enacts that judges hold office during good behaviour, as do many high office-holders. The words "during good behaviour" have a particular constitutional origin and meaning. Judges, too, have a duty of allegiance to Canadian sovereignty. They also have a duty of vigilance against treason. For this reason, the BNA Act gives Parliament the superintendence of judges.

Section 99.(1) states, in part:

... the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Senate addresses for removal of judges and high office-holders for non-good behaviour are unique. Parliament, in particular the Senate, is the constitutional watchdog of Canada's sovereignty. It was for those reasons these powers were given to Parliament.

Honourable senators, my survey of allegiance, sovereignty, and Parliament's enacted duties necessitates mention of a few other express provisions of the British North America Act 1867. These provisions speak plainly to the indivisibility and oneness of Canada. Its preamble states:

Whereas the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, with a Constitution similar in Principle to that of the United Kingdom: —

One dominion means that — one nation, one indivisible nation. The BNA Act was a very well-drafted act. The actual drafting received great attention, not only from Sir John A. Macdonald but from an exceptionally skilled draftsman named Lord Henry Thring. They chose the word "one" deliberately. This word "one" is again repeated in other sections of the BNA Act. For example, the word "one" is repeated in sections 17 and 102. About the Parliament of Canada, section 17 states:

There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

There is one dominion, there is one Parliament. Senators should take note of the word "one."

About the revenue fund, section 102 states, in part:

...One Consolidated Revenue Fund ...

Taken together, there shall be one dominion, and one Parliament, with one Consolidated Revenue Fund for the one nation, Canada. The BNA Act is loud and clear. It is not silent.



Honourable senators, I have read a great deal about the development of the legislatures into the Parliament and the bedeviling problems it caused Sir John A. Macdonald and the Fathers of Confederation. About this, Sir John A. Macdonald had to do a great deal of talking to persuade a great many on the Imperial side of the ocean.

Honourable senators, I oppose this motion because my agreement to this motion would at the same time be my agreement to the committee result. The government by this motion seeks to obtain a particular committee result from this special committee by simply selecting members on the basis of whether or not they will give the results that the government wants.

I contend that there is no legal, constitutional basis for the disunion of Canada or for the secession of any province. No government of Canada or a province has a prerogative to negotiate secession. There is no such prerogative. I have studied the Royal Prerogatives extensively and there is no such prerogative. Secession is not a proper legal or constitutional function of the Government of Canada or of the proper function for the appropriation of its tax dollars.

The first objective of the Constitution, and the government, is to preserve the Constitution and the country. Canadians have a constitutional right to a Parliament, a cabinet, and a Queen whose first duty under the law is to preserve a state of affairs where society can be conducted without interruption, without division, that is, the words of section 91 of the BNA Act "for the Peace, Order and good Government."

The British North America Act, 1867 condemned treason by its express provisions. It upheld unity and sovereignty by its express provisions. The BNA Act was intended to protect citizens in the integrity, safety, security, intactness and continuity of their political community of their body politic, that is, of their country. Sovereignty is indivisible. Sovereignty is inalienable. In a constitutional monarchy, the principle was that "the King never dies." The human body of a king may die, but the royal character and the realm, the kingdom, continues. I ask honourable senators to think of the old expression, "The King is dead, long live the King!" The kingdom is forever.

Further, no king has any Royal Prerogative to end the kingdom. I ask honourable senators to reflect upon what Sir John A. Macdonald and the Fathers of Confederation used to say. They said that they were constituting in the BNA Act a Senate that would last as long as the country Canada was a nation. They did that because they understood a great deal about politics and human beings. They also understood the constant threat of secession from south of the border, the raids back and forth and the constant attacks under which Canada lived in fear for many years.

Minister Stéphane Dion has had much to say publicly about the abolition of the Senate. Many believe that he wants to abolish the Senate because it is an appointed chamber. Many people believe that he was sort of appointed to the House of Commons. It seems that Bill C-20 springs from his fancy because no one can tell us the constitutional legal authority on which the bill, or any

of these actions, is based. All they can say is, "The Supreme Court of Canada said..." However, the Supreme Court of Canada told us that the express enactments of the BNA Act are misleading. If they would say that the law is misleading, then upon what have they relied to come to these conclusions, which they then turned around to say are legally binding on the Government of Canada?

I hope that we will get a chance to put these questions to Minister Dion. Law is something that should be clear, obvious and known to us. It is not some obscure mystical concept that is hidden away and only known to be discovered by two, three, four or nine people.

Some years ago, in this very chamber, there was a disagreement between some senators and the then minister of finance Donald Fleming. The issue of the disagreement was the then governor of the bank of Canada James Coyne. Disagreeing with Minister Fleming, because the Liberals here took up the cause of the then governor Coyne, Liberal senator Adrian Hugessen described one aspect of the many disagreements. During debate on a bill on July 8, 1961, Senator Hugessen, when asked what he would have done, said, at page 1069 of Hansard:

I know what I would have done. I would have told the minister to go to hell. That, in effect, is just what the governor did, though I must admit he used more polite language.

Honourable senators, I oppose this motion. I feel very strongly about my right and ability to serve as a member on the Legal and Constitutional Affairs Committee to study the issues. Quite frankly, I feel that I have earned that over several decades now of loyal service to this party and this chamber.

Honourable senators, I do not speak about race. However, I shall just say that I am getting tired of being overlooked. It seems to me that every newcomer can come to this chamber and become members of the committees that they want to become members of, and to chair whatever committees they want to chair. I just serve and serve and serve.

I believe it was Milton who said something about "they who wait." I wait.

• (1550)

I do not mind waiting because I really do believe in this process that we call Parliament, which is why I find Bill C-20 so very offensive.

Honourable senators, one must understand that I grew up in a colonial community that always pointed to the United States of America and said, "You see, they settled slavery over there by civil war. We settled it over here by Parliament." The name William Wilberforce was held up to me as an icon. I did not grow up in a time when children's idols were hockey stars, movie stars and various other kinds of stars. The personalities that were held up to me when I was a very little girl were the Shaftsburys, William Wilberforce and Thomas Clarkson, all abolitionists.

Honourable senators, I believe very strongly that these committees should not be constituted at the whim of government. The Speaker and Senator Hays were earlier talking about Speakers' rulings. We are considering the rules of the Senate every day. If these questions cannot be settled by the individual conscience of leadership, we may have to go the route followed by other jurisdictions where chairmanships of committees are awarded based on years of experience. Many jurisdictions make decisions in that way.

Honourable senators, my natural instinct is always the parliamentary instinct, the British instinct. I serve here alongside you because I believe these institutions are of enormous inherent value, and that is the problem with this bill and this motion.

This motion is very quietly seeking to overturn a motion passed last November. Last November, the leaders on both sides asked for the agreement of senators on which individuals should serve on which committees. The Senate made its judgment at that time as to which senators should become members of those committees.

Honourable senators, I find this motion unacceptable and I have no alternative but to say so. I am in a position that many senators here do not find themselves in. Many people want to know my position on these issues.

Honourable senators, it is incumbent upon every generation of leadership to treat these institutions and processes with gentle care in order to preserve them for future generations. I ask honourable senators to consider whether, through this motion and Bill C-20, we are handing this institution on to future generations.

**Senator Kinsella:** Would the Honourable Senator Cools entertain a question?

**Senator Cools:** I would be happy to take questions.

**Senator Kinsella:** In the earlier part of her speech, I understood Senator Cools to say that this motion was motivated by an attempt by the government to circumvent her participation as a member of the committee that will examine this legislation. Has she evidence of that attempt that she could share with this chamber?

**Senator Cools:** Honourable senators, I was speaking to the intended results of the motion. I do not recall saying words like "motivation." I do remember saying the word "motion."

Whatever evidence I have, I would never put on the floor of the chamber because of the depth of my feelings for this institution. Some issues are Senate issues, some are parliamentary issues, some are caucus issues, and some are issues of conscience. However, I believe that at this point in time these issues are confused. Perhaps, over time, we can debate these issues and clarify them.

**Senator Kinsella:** Would the Honourable Senator Cools give us her view on whether it would constitute a breach of privilege of a senator and, therefore, a breach of privilege of this house if the government picked on a member of this house by deciding not to send a particular legislative initiative to a particular

committee because that senator were a member of that committee? In her opinion, would that constitute a breach of parliamentary privilege?

**Senator Cools:** There are definitely questions of privilege. The only problem with questions of privilege is that no one knows what they are any more. Jurisdictionally, Canada has been the most negligent in developing jurisprudence on the question of members' privileges. Within Canada, the Senate has produced the least jurisprudence. There has been a reluctance not only to examine privilege but to uphold and defend it. In the 16 years during which I have been a member of the Senate, this institution has come under the most ghastly and scandalous attacks. Yet, I have repeatedly seen a reluctance by the Senate to defend itself.

On Senator Kinsella's specific point, in 1997, when we were studying Bill C-41 dealing with changes to the Divorce Act, the chairman at the time, Senator Bosa said publicly in the newspapers that he wanted to try to organize my ousting from a committee.

Let us make no mistake. We do exist in a party system, and I think a party system is valuable and should be maintained. However, there is a balance between the party system and the parliamentary system, and they are two different systems. Yes, we rely on party leaders in this chamber to recommend senators for membership on committees, but we sometimes forget that in the long run these decisions are made by orders of the Senate. The real problem arises when, in the name of loyalty, unquestioned acquiescence and obedience is asked for, quite often at the expense of trampling rights and privileges. At some time we must find a way to balance and clarify these interests. It is a very troubling question.

As I have said, I am not pleased. Furthermore, I think the situation is unfair and unjust.

**Hon. Lowell Murray:** Honourable senators, Senator Cools stated in her speech and repeated in reply to the question from Senator Kinsella that the decision by the government to bypass the Standing Senate Committee on Legal and Constitutional Affairs and propose the establishment of this special committee was taken so that the government could obtain the results that it desires from this committee process. If she is unwilling to tell us what her evidence is for that statement, we will understand. However, without breaking any confidence, I think she can tell us what outcome the government desires. Specifically, is she stating that it has already been determined that no amendments will be permitted to pass that committee?

• (1600)

**Senator Cools:** Honourable senators, this is a very troubling matter. I should like to go at this perhaps by referring to our own record here a few weeks ago. If one will recall, a few weeks ago I spoke on the floor of this chamber and referred to particular newspaper articles that were not only able to refer to the existence of a special committee but also to the chairmanship of the committee. In that exchange, I remember that Senator Kinsella, as an aside, said, "Does the media have a copy of the report?" At the time, I sort of chuckled and let that particular statement go by.



The fact of the matter is that the government wants the bill passed without amendment. That happens quite often. The particular problem in this instance is that large numbers of senators, on both sides, have stated that they have some problems with the bill.

We come to the essential question: What is service to the party, and what is loyalty worth in terms of being able to influence decisions that are made across the road in the PMO? When I first came here, Senator Roblin was the leader, and then Senator Murray became leader. One was always told, "This is the system. One should not expect to chair Banking or get on Foreign Affairs until one has served for so many years." I must now discover whether it is the system or not, and whether it is the process or not.

My understanding has always been that party loyalty means more than one or two people making a declaration and then demanding allegiance to it from party caucuses. My understanding of responsible government is that there is a give and a take and that there is an exchange of loyalty back and forth between leader and follower. That is my understanding.

I should like to share with you an anecdote I remember reading about C.D. Howe. He once referred to perhaps his first experience in caucus, or something like that, where apparently Mackenzie King rose at the end of caucus and summarized the consensus. Apparently, C.D. Howe sprung to his feet, and said, "No, Prime Minister, that was not a consensus at all." Somewhere, in one of the beautiful books that was written by one of the many members, there is a line where C.D. Howe says, "I learned very quickly that when the leader said it was consensus, it was consensus."

I think we must deal with the fact that party politics as we have known it in this country is changing. Party politics as I used to know it may be a thing of the past.

**The Hon. the Speaker:** Honourable senators, the 30-minute additional leave period has expired. Are there other speakers?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I should like to speak on this motion. Much of what I would have suggested has been confirmed by Senator Cools, so far not denied, that the special committee is being proposed basically if not exclusively to exclude from voting privileges certain members on the other side who have expressed, in this chamber, and perhaps elsewhere, some thoughtful and serious arguments questioning parts of the bill and the bill itself. It is unfortunate that those senators will not be allowed to continue their argumentation in front of witnesses at the standing committee of which they are members. However, they will, if the special committee is formed, be allowed to attend and participate in the debates. Therefore, whatever the purpose of the special committee, a purpose that has never been stated by the deputy leader, it will really not be realized.

I find it strange, too, that we are being asked to create a special committee to consider a bill in which the Senate's role is reduced to that of an unwanted consultant, in effect giving the bill special prominence while our role in it is extraordinarily limited. Meanwhile, the House of Commons is called upon by the bill to

play a very crucial role, and it found it quite proper to send the bill to a standing committee. Here we are with a reduced role being asked to give special status to the bill by the creation of a special committee while the House of Commons with a crucial role sent it to a standing committee.

It is essential that the expertise found on the Legal and Constitution Affairs Committee be available to those who will be called on, in the end to decide, on the fate of this bill.

I find it rather — I do not know if the word is "insulting" — certainly demeaning to the members who have already been named to sit on this committee to know that they have been asked, in large part, because they are in agreement with the bill. Apparently amendments will not be accepted, if I understand the question asked by Senator Murray and the answer given by Senator Cools. I would hope before the end of this debate for some clarification on the role of this special committee and on the role of the proposed members on the government side. If they are to be rubber stamps to do the bidding of the government, more or less blindly, it will be left up to the opposition members, if they agree to serve on this committee to do the work that both sides should be doing.

I hope that we are not adopting some of the practices in the other place where the government deliberately chooses members on committees to hasten the passage of bills. It is done openly and deliberately. Ask any government caucus member over there. Why we should be drifting to that direction is beyond me. It is unnecessary. We work on committees here in a collegial fashion. I sense that in this case there are firm instructions being given to the government side that will have a very negative effect on the deliberations.

I do feel very strongly that the Standing Senate Committee on Legal and Constitutional Affairs, which is being shunted aside, should have a role to play in the assessment of this bill, and that is why I want to end by proposing the following amendment.

#### MOTION IN AMENDMENT

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, in addition to the present motion, or as the last paragraph, I move, seconded by Senator Robertson:

That upon completion of its report and prior to its tabling in the Senate the Committee forward the report to the Standing Senate Committee on Legal and Constitutional Affairs for opinion and comment on the Bill, in particular its constitutionality.

I also have a recommendation for the deputy leader. The motion reads that four members constitute a quorum. The figure four is not in question, but it could be, if left like this, four members of the government side or four members exclusively from the opposition side. It should read, and I am just suggesting the wording, that four members constitute a quorum that must always consist of at least one government member and one non-government member. I believe that is the practice in committee, but I believe it is essential that the wording be in the motion. I should like that to be a government amendment, so I do not make a motion as such but rather a recommendation.

**The Hon. the Speaker:** Honourable senators, it is moved by the Honourable Senator Lynch-Staunton, seconded by Honourable Senator Robertson, that the motion be amended by adding:

That upon completion of its report, and prior to its tabling in the Senate, the committee forward the report to the Standing Senate Committee on Legal and Constitutional Affairs for opinion and comment on the bill, in particular, its constitutionality.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** No.

**Some Hon. Senators:** Yes.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, we have an order of the House to vote on this motion and all amendments at six o'clock today.

I should like to rise now, now that I have another opportunity to speak, to speak to Senator Lynch-Staunton's amendment, and perhaps other senators will wish to comment as well.

• (1610)

I have listened carefully to the interventions. I should like to comment generally, first, and then address the specifics of Senator Lynch-Staunton's amendment.

The main thrust of the two interventions are that the committee membership on the special committee, which is recited — and it did not have to be recited, but it was recited in the motion and reflects the names being put forward by the government side — is, in some way, inappropriate or designed to prejudice the result of the committee's work by virtue of the people who will serve on the committee. That is a disservice to the people whose names are listed there. I think they all have a measure of independence and they are all capable of making up their own minds on what they wish to do.

I shall concede that, from the viewpoint of the government side, it was not our purpose to seek a set of names of senators who would be opposed to the bill. We have this unusual situation where there are some senators not only, as I interpret it, on the opposition side but also on the government side who have a desire to defeat or to amend the bill. Why we would put members forward who have that intention is a good question, and it is one that is raised in Senator Cool's comments.

Next, I wish to refer to the rules on committee membership, to support why I do not believe there is a good cause to complain.

Rule 85(4) and (5) of our rules state:

(4) Subject to subsection (5) below, a change in the membership of a committee may be made by a notice filed with the Clerk of the Senate who shall cause such change to be recorded in the *Journals of the Senate*.

(5) The notice referred to in subsection (4) above shall be signed:

(a) with respect to Government members, by the Leader of the Government in the Senate or any Senator named by that Leader;

Normally, it is the whip. The next paragraph states:

(b) with respect to Opposition members, by the Leader of the Opposition in the Senate or any Senator named by that Leader.

This envisages that membership on committees — whether it is a standing committee, such as the Standing Senate Committee on Legal and Constitutional Affairs of which Senator Cools is a member, or a special committee — can be changed. For instance, the matter could be referred to the Standing Senate Committee on Legal and Constitutional Affairs and Senator Cools could be replaced on the committee with a simple signature of either the Leader of the Government or his designated person. The fact that it is a special committee does not make any difference, in terms of picking the senators who will deliberate. Senator Lynch-Staunton's point is a good one. That is common practice in the other place but it is not common practice here, nor do we want it to become common practice here.

Why is it done that way? It is done that way because, in my opinion, the leadership of the two parties that form the membership of this place, with the exception of the independents, who are not party members, have a responsibility to be responsive to their caucuses. If the rule is being misused then the caucus will act appropriately and chasten the leadership or change the leadership, or do whatever is necessary to ensure that what is being done by either the government side or the opposition side is consistent with what will happen.

Honourable senators, I put it to you that, while it is not the unanimous position of this side, what has been put forward in the motion proposing a special committee does reflect what the caucus on this side wants to do. I do not want to get into confidential matters that take place within caucus. That is my general comment.

I do not have Senator Lynch-Staunton's amendments in front of me, so I may not do them full justice by going from memory. One of the amendments that Senator Lynch-Staunton proposes would have whatever the special committee might do — that is assuming it is formed, the bill is referred to it and it reports back — referred for further consideration to the Standing Senate Committee on Legal and Constitutional Affairs for opinion and comment on its constitutionality. I would not support that amendment, because that is something well within the power of the special committee to do. I am sure that membership on the other side and, for that matter, membership in the special committee — that is, if it is created and if it receives Bill C-20 — are well able to decide, as is this chamber, whether that work was well done and whether the committee has expressed its opinion on the question in a satisfactory way. In simple terms, that is what I would not support that amendment.



Then we had the issue of a motion sort of instructing the committee, in a permissive way as opposed to an approved mandatory way, to actually develop such an amendment. We, on this side, objected to that approach. Some of the reasons for objecting to that approach would apply here as well. I shall not repeat them.

In terms of the concern about the quorum — not so much its size, but the appropriateness of simply saying “four members constitute a quorum” and there being no necessity of one of those members representing either the government or the opposition — I have some sympathy with that argument. While I do not have an opportunity to consult with my leader on this, or others, I do not see any problem — and I guess I speak for the government here — in agreeing to that. I think that could be a practice of the committee. Perhaps the honourable senator is satisfied with that. If not, I shall speak to the Deputy Leader of the Opposition with respect to this matter to see if we might be able to resolve that concern. I shall deal with any questions that honourable senators may have, but we will see what we can do to accommodate that concern.

**Hon. Anne C. Cools:** Honourable senators, could Senator Hays give some clarification? He said that the situation is not really different. If there is no difference, then why do we need a special committee at all? The conclusion must be that Senator Hays has asked the chamber to agree that it does not have confidence in the Standing Senate Committee on Legal and Constitutional Affairs. That is an inescapable conclusion. That is my first point.

Second, Senator Hays cited rule 85(4) and (5), which speak to the question of changes in memberships, but, Senator Hays, in so doing overlooked two important words. Those changes in membership go on daily, as senators substitute for each other. The critical words that he omitted in that case are “with consent.” The process clearly states that the Senate chamber, as a whole, is the determining agent or power that enables members of a committee or a committee to be constituted. Once that power has moved into operation, in the in-between time, with the consent of the individual senators, there may be changes.

However, if Senator Hays as leader, or if, on the other side, any leader attempted to move a committee member without his or her agreement, I assure Senator Hays that the matter would have to be returned to this chamber. The final arbiter of membership on committees is this chamber.

• (1620)

I have one other observation. The leaders speak frequently to each other on the floor of the chamber, and we quite often hear the word “negotiation.” Referring to Senator Kinsella’s question, it is very important to assert again and again that the privileges and the voting rights of senators are too valuable to be traded away by negotiation between two leaders.

This system is so bad that in some jurisdictions, the leaders are opting to vote en masse for all their members. I am not sure, but I think that such a recommendation was put to the House of

Commons a couple months ago. The system is moving in that direction in some jurisdictions. It seems to me that as honourable senators, if we dare to use that term — and if we call ourselves honourable, which comes from the Royal Prerogative — we have a duty of diligence to this place. The first duty, as I said previously, is to uphold the process in and of itself.

**Senator Hays:** I refer the Honourable Senator Cools to the speech that I gave in support of the motion. That speech gave my reasons for going to a special committee. There were a number of matters raised in my speech that went a long way toward, if not satisfying the honourable senator, answering the question on why a special committee would serve us better than simply referring it to the very busy Standing Senate Committee on Legal and Constitutional Affairs.

In regard to the second point made by the honourable senator, on change of membership, I do agree. If the government, or the opposition side for that matter, operates in an unfair and high-handed way, that would be noticed and that would create a response, probably led by the person who had not been treated well.

I cannot agree, however, that the Senate is the determiner of membership. If we, on this side, wanted to use our majority to determine who should represent the opposition on this or any other committee, then that would be unacceptable. I do not know if there is a rule or not. However, I would not envisage even trying to do that, nor would I expect the other side to determine the membership. It does come back to the whole chamber as to who should sit on a committee.

Honourable senators, while I am on my feet, I should like to touch on one other point that has been raised. I thank my predecessor, Senator Carstairs, for this, and I shall raise it with Senator Kinsella. In terms of a quorum and the ability of the committee to meet, the one thing that we do not want to do is have the committee unable to meet simply because a member of the government or of the opposition is not present. Perhaps, we can build a time frame into that. In other words, if there is no member of the opposition or the government present, perhaps that committee could wait an hour before proceeding to ensure that the committee does proceed in a way that is reasonable in terms of both sides being present to hear evidence or to make determinations.

**Senator Lynch-Staunton:** Honourable senators, I rise with a question for the Honourable Senator Hays. He referred to his remarks last week in support of the motion. The main argument he gave was that the agenda of the Legal and Constitutional Affairs committee between now and the summer recess was so full that it would be unfair to burden that committee with this bill.

I notice amongst the proposed names on the government side is that of Senator Milne, who is the Chairman of the Legal and Constitutional Affairs Committee and whose diligence and hard work are appreciated on both sides. Would the deputy leader not be imposing an extra burden on her by also having her sit on this new committee?

**Senator Murray:** Shame.

**Senator Kinsella:** Discrimination.

**Senator Lynch-Staunton:** Does the deputy leader not feel that the work that Senator Milne would contribute to her committee is enough and that another senator should substitute for her on the new committee? If what the deputy leader said about that committee's work is accurate, Senator Milne will be hard pressed to satisfy the new obligations that will be imposed upon her.

**Senator Hays:** Senator Milne will, of course, speak for herself in terms of her time. She is a respected chairman of the committee. A number of comments have been made in debate that the views of that committee and its expertise should be represented on the special committee, and this is a way of accomplishing that. If, in fact, the burden is too heavy for Senator Milne, she would let us know and we will find an appropriate replacement for her.

**Senator Cools:** I would make that offer.

**Hon. Douglas Roche:** Honourable senators, this motion troubles me for two reasons. First, and I suppose this may be minor, it seems to me that the decision of the Senate to strike a special committee, even before the passage of Bill C-20 on second reading, is premature. It anticipates that the vote would indeed be positive. I am concerned about good order in that respect.

**The Hon. the Speaker:** I regret to interrupt the Honourable Senator Roche, but there is a motion in amendment proposed by Senator Lynch-Staunton. I believe that Senator Roche is speaking to the main motion and not to the amendment.

Is it the wish of the Senate that I hear discussion on the main motion and discussion on the amendment at the same time?

**Senator Hays:** Agreed, otherwise they will not be heard.

**Senator Roche:** I shall mention Senator Lynch-Staunton's amendment in passing.

The vote that I shall cast on Senator Lynch-Staunton's amendment and the motion as a whole will be the same vote because of that presumptive treatment.

My second concern regarding this motion deals with the composition of the special committee as set out in the Order Paper. Nine Liberal members have been named. Fifteen members will compose the committee. That leaves six members remain unnamed. One assumes from the debate that it is expected that the Progressive Conservative Party would name the remaining six members. It would be for them to decide.

However, we are in the strange position of being asked to vote to strike a committee with only part of the membership of that committee established. In other words, we would be voting in a vacuum, without knowing who would be the other six.

Honourable senators, I find that rather strange. It is, again, a reflection of the prematurity argument that I introduced earlier.

I am now forced, in diligence to my position as an independent senator, to make the point that, once again, independent senators will not be considered for membership on this committee, in addition to every other committee. It is precisely because of the importance of the subject matter of the bill in question — namely, the future of our country — that I feel it necessary to say that in my humble view it is wrong to exclude, *ipso facto*, certain members of the Senate from consideration of being members of a special committee by virtue of the fact that they do not belong to party caucuses within the Senate.

• (1630)

Honourable senators, I should like to ask: Where does it say in the Senate rule book that a senator must be a member of a party caucus in order to serve on a committee? Where does it say in the traditions of the Senate that one must belong to a party caucus in order to serve on a committee? Where does it say in the Constitution of Canada that the appointment process of senators must be within party confines? Of course, the answer to the three questions that I have posed is: nowhere.

In fact, honourable senators, in all but one of the 13 decades of the life of our country and the existence of the Senate as we know it, independent senators played a role — indeed, an important role. Some were even chairmen of committees. Then, at the beginning of the 1990s, a period, of course, when I was not here and can only read about, there occurred a series of events that led to the present rule book and the present processes by which the Selection Committee accepts lists put forward by the two parties. I submit that this one decade in which we have been living this way in the Senate, of the 13 decades of the Senate, is an aberration and that it should be repaired.

Senator Cools ended her speech by talking about a view in the public that party politics has had too strong a say in the determinations of our country. Senator Lynch-Staunton, I believe, spoke about the collegiality that is necessary in order to make this place function effectively, or at its best. I think that it is wrong to maintain this aberration. It is coming very much to the fore in the present instance.

Honourable senators, I would not want the views that I am setting out here now to be construed as being in any way obstructionist. Indeed, were I able to be present on Thursday in this chamber for the vote on Bill C-20 itself, I would vote for the bill, for reasons that I explained in my speech on Bill C-20 which I shall not repeat now. However, I believe that, as this bill goes forward into committee study, if the deficiency in the bill concerning the Senate is not properly addressed, we will find great difficulty when we come to the third reading stage.

This argument has been greatly enlarged, it has been spoken about by many honourable senators, including myself, and thus shall not dwell on it now, but I feel that the disenfranchisement of particular senators in this respect is not proper. I also hope that my remarks will not be construed as preaching for a call. I am speaking to the principle of the Senate, the principle of our country, and I believe this motion undermines that.



For those reasons, honourable senators, later this afternoon, when His Honour calls for the vote, I shall abstain.

**The Hon. the Speaker:** Honourable senators, if there are no further speakers, the question before us is the amendment. The original motion calling for the vote at 5:30 was on the main motion. Would it be agreeable to honourable senators that I put the amendment in with the main motion and that we deal with them at 5:30?

**Hon. Senators:** Agreed.

On motion of Senator Carstairs, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, under Government Business, I should like now to call, as our second item for discussion, resumption of debate on Bill C-20. It is Order No. 3.

### BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE

#### SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

**Hon. Terry Stratton:** Honourable senators, I rise today to speak to Bill C-20, the Chrétien constitutional bill. Before I begin, I should like to say that I have never been more proud of this place and the role it plays. The quality of debate has been extraordinary, and I congratulate all those who have participated.

When I first heard of this bill, I was appalled, to say the least — appalled that a Prime Minister of Canada would lay out so-called ground rules for secession by any province in Canada, not just Quebec. The reaction on my part was visceral. Here we have a province calling a referendum with a so-called clear question. The results come in with a clear majority. The negotiations take place between the federal government and the province, and, of course, are unsuccessful. The province then goes to the international community and says, "Look, we tried," and then makes a unilateral declaration of independence. Then, guess what, there is immediate recognition on the part of several countries as to this UDI. Then what? What happens when that occurs? It is the fundamental question that this bill does not address.

Let us go back to the reasons this bill is now in this place — to 1995, to 50.6 per cent and 49.4 per cent, to a man

who kept telling the country not to worry, to the absolute panic that took place during the last week of that referendum. Imagine what must have taken place in the PMO during and after this referendum. Put yourself in their place. What would you be thinking? What would you be imagining: Losing, being the man who presided over the breakup of this wonderful country, after you had told the people, "Don't worry, have a great summer"? If you were he, you would, of course, vow that this would not occur again. You have to have a little sympathy. After all, the day was saved because the Canadian people became involved. They saved the day — and not the man who was ultimately responsible, the "don't worry, be happy" man.

That is why we have Bill C-20, the Chrétien constitutional bill. This little history still reverberates in the minds of Canadians. In my view, this bill is simply a saving-face bill, to show Canadians that he is assertive, that he will, by the magic wand of legislation, prevent such an event from happening again.

• (1640)

I shall not attempt to address the legal or constitutional aspects of the bill, which has and will be addressed by others far better qualified than I. Eloquent speeches by Honourable Senators John Lynch-Staunton, Noël Kinsella, and Serge Joyal are there to be read and absorbed. I wish again to thank them.

I should like to quote a part of Senator Lynch-Staunton's speech, where he states:

In a most extraordinary trespassing on the jurisdiction of Parliament and every provincial legislature, the Supreme Court gave legitimacy to separation, and now the government is using the Supreme Court as justification to confirm secession as a lawful objective.

As Senator Kinsella stated in his speech:

Where is the constitutional authority for this proposed legislation to be introduced here in Parliament? The advisory opinion of the court does not indicate any constitutional authority on which to base the legislation that has been introduced by the government.

My question is: Who does the PMO think they are — God?

Who is running this country? Let me guess. Could it be the Supreme Court and the PMO?

I should like to address the issues I outlined earlier. I shall take you through what I believe will be the process that may occur in the next referendum.

There is the matter of the question. Clauses 1.1 and 1.3 of the bill attempt to define the acceptance of the clarity of the question and, as stated in 1.5, the House of Commons, in considering the clarity of a referendum question, is supposed to take into account the views of all political parties of the province proposing the referendum, as well as the views of the legislature of each province and territory and, bless them, "any formal statements or resolutions of the Senate...and any other views it considers relevant."

That is awfully kind of them. Benevolent and elitist once again, they control the other place but not necessarily here, and that, I believe, is their great fear, regardless of the constitutional implications.

We have to do all of this in 30 days, no less. Imagine that process, if you will.

Then there is the matter of the majority. Clause 2.1 states, in part:

...there has been a clear expression of a will by a clear majority of the population of that province that the province cease to be a part of Canada.

In 2.2:

...the House of Commons shall take into account

(a) the size of the majority of valid votes cast in favour of the secession option;

(b) the percentage of eligible voters voting in the referendum; and

(c) any other matters or circumstances it considers to be relevant.

As has been said by many others, does a clear majority mean 50.6 per cent in favour of separation, or is it 51 per cent, or 60 per cent, or 67 per cent?

It simply matters on whose side you are on. Who decides — the Supreme Court and the PMO? What if, again, the answer is no to secession? Does that end it once and for all? Should this bill not address that question?

Then there is the matter of negotiation. Clause 3.1 states, in part:

...therefore, an amendment to the Constitution of Canada would be required for any province to secede from Canada, which in turn would require negotiations involving at least the governments of all of the provinces and the Government of Canada.

Can you imagine what would take place? Remember, as Senator Joyal has said, B.C., Alberta, and Manitoba must have, under their law, a referendum when it comes to constitutional reform.

Do you really believe that the Canadian people would put up with placing their futures, once again, in the hands of the PMO?

We have such short memories. Meech Lake, Charlottetown and the referendum of 1995 come to mind.

Of course, the negotiations would take a very long time. Consider the referenda that would have to be held in those three provinces, after public hearings. As a result, the Quebec

government would go to the international community and say, "Look, we have tried for this length of time, and to no avail." Hence, the UDI, the International Declaration of Independence, with, immediately following, the recognition by friendly states and states that just want to create any instability they can, and we can easily name a few.

What then? Please tell me that there is a solution to be found in this bill or elsewhere, as I cannot see anything but dire consequences for the country.

This is not the way to go. While popular in the minds of Canadians at first blush, this bill is not the answer.

In my view, if you want to go this way, go all the way. Outlaw any referenda that have to do with the breakup of the country. That way, it would perhaps be more difficult for other countries to recognize a UDI, or, at least, as the Prime Minister earlier told Canadians who do not like our high taxes, "If you do not like it, get out of Canada."

What about the rights of the rest of Canada? What about the rights of the provinces? Where are they in this equation: bystanders, at best, in the negotiations, to watch and stand by while the Prime Minister negotiates the breakup of Canada?

What about the rights of aboriginals living in Quebec? What about those in Quebec who want to remain a part of Canada? Do you believe they would be given any choice but to leave if they did not like it?

This is not something that can be talked about and rationalized with statements and legalities. The simple fact of the matter is that, should a UDI occur and be recognized by other countries, do we not have to recognize the potential for civil disobedience? To state the unmentionable, do we not have to examine the potential for a civil war? What then?

Have we really examined what we are doing here today? Should we not talk about the unmentionable? Should we not discuss the potential impact it would have?

We are, after all, a gentle people. We do not discuss such things. Or do we? We owe it to the country to discuss this potential, the devastation that would occur, not only with the loss of lives, but the economic degradation that would occur, as we have seen elsewhere.

Canadians need to face that reality. But I tread on eggshells here, and cracked ones at that.

Let us go back to the rights of the rest of Canada. Here we have one province wanting to leave and telling its people right now that they would run a surplus in their budget on separation. What of the impact on the budgets of other provinces? What of the impact on the economy as a whole and the value of our ever-diminishing dollar? Do the provinces not have a say as to the costs to them and a right to ask how these costs will be shared by that separatist government that will run a surplus upon leaving?



What of the aboriginals in Quebec, who, I should hope, do not want to leave the federation? They will want to remain a geographic part of Canada.

Again, what about the rights of those Quebecers who vote to stay in Canada? Do they leave Quebec, causing economic hardship to themselves — and who pays for that — or do they stay on the island of Montreal in a virtual ghetto?

The bill is silent on all of this. It remains for the federal government and PMO to determine the fate of Canadians. As was said during Meech Lake, what are we — chopped liver?

All this will be negotiated in a reasonable length of time, after a clear question, with a clear majority. If you believe that, I have some land that I should like to talk to you about that is ideal for growing bananas. The only problem is, it is up in Churchill, Manitoba, but we have global warming, after all.

We have to realize that the time frames imposed or implied in this bill are not achievable, to say the least.

Another devious part of this bill is the sheer brevity of it. It is, after all, only four pages in total; imagine, four pages, including the front and back sheets, defining the breakup of Canada.

Let us get positive for a moment.

Canada is, for all of us, the most wonderful place to have the good fortune to be living in, to spend our lives, to raise our families. It is a land of wonder to me, wonder at its vastness and its incredible diversity, both in geography and people.

• (1650)

The greatest wonder is how Sir John A. Macdonald put it all together and how it has remained together since. Despite the strains between the regions, history has shown that the country works — awkwardly, to say the least. As has been said by others in this place, Canada is one and indivisible. It is our responsibility to ensure that it remains indivisible, and we cannot do that by passing a bill that helps to determine its breakup.

The ultimate responsibility for separation of any province must lie in the hands of the people of Canada. We, the so-called elitists, have tried in the past to take this responsibility and have been rejected on more than one occasion by these same Canadians. To believe that the so-called elitists can conclude and sign the negotiation of the separation a province will cause an absolute uproar.

You say that the other place has the final say. Yes, we have seen them work. Anyone who places their trust in the outcome not being determined by the majority in that place, and hence the PMO, is not correctly reading the mood of Canadians on an issue such as this.

This event must be carried out at the will of the people through a national referendum approving any separation negotiated by the PMO. To do otherwise would risk all.

As I stated earlier, Canadians are a gentle people. We do not particularly like confrontation. We evolve, as most working

democracies, over time, with a great deal of patience for all regions and for all diversities.

I believe that many senators do not want to give this bill approval in principle. Many senators are concerned by the argument raised against this bill on both sides of this chamber. Many senators would like clarification of the issues raised in this debate through hearings in a committee, without having previously approved the principle of the bill.

**Hon. Sharon Carstairs (The Hon. the Acting Speaker):** Honourable senators, I regret to inform the Honourable Senator Stratton that the allotted time for his speech has expired.

**Senator Stratton:** May I have leave to continue?

**The Hon. the Acting Speaker:** Is leave granted to allow Senator Stratton to continue?

**Hon. Dan Hays (Deputy Leader of the Government):** Could the Honourable Senator Stratton indicate how much more time he would require?

**Senator Stratton:** I have a page and a half left in my speech.

**Senator Hays:** Perhaps we should grant leave for a one-half hour extension.

**The Hon. the Acting Speaker:** Is that agreed, honourable senators?

**Hon. Senators:** Agreed.

**Senator Stratton:** Thank you, senators.

Honourable senators, supporting the motion that I shall now put before the Senate would allow exploration of the subject matter of Bill C-20 without having approved in principle a bill which may be unconstitutional, which may violate the constitutional practices in Canada, and which omits one of the two legislative chambers in the Parliament of Canada from exercising a crucial role in relation to the question of the separation of a province from Canada.

#### MOTION IN AMENDMENT

**Hon. Terry Stratton:** Therefore, I move, seconded by the Honourable Senator Lynch-Staunton:

That the motion for second reading of Bill C-20 be amended by deleting all the words after the word "that" and substituting the following therefor:

Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference, be not now read a second time but that the order be discharged, the Bill withdrawn and the subject matter thereof referred to the Standing Committee on Legal and Constitution Affairs.

Of course, should a special committee be established to deal with Bill C-20, this motion will be amended accordingly.

**The Hon. the Acting Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** No.

**Hon Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to speak to the motion in amendment, as perhaps would other senators.

Honourable senators, this is a hoist motion and would, in effect, serve to defeat the bill. I have not spoken to the main motion, but I shall speak very briefly to this motion in amendment to disagree with my colleague the Honourable Senator Stratton in his opposition to the clarity bill.

In his speech, Senator Stratton said that he has observed that this bill has been well received by the public, as I have observed as well. I believe that the experiences of 1995 and 1980 were such that the public of Canada considers this bill to be an essential part of a government strategy in dealing with a future referendum, which one can almost guarantee will be based on a question carefully devised by pollsters to elicit the answer desired by the government posing the question.

In 1980 and 1995, the Government of Quebec represented a minority of those people. The majority spoke, more loudly in one instance than the other, and said no. The "no" may be considered weak in both cases if one accepts the proposition that 50 plus one is not a sufficient percentage in a referendum to prompt the breakup of a country.

I believe it is essential that the Government of Canada have this legislation on the books, first, to assist in discouraging a provincial government from putting such a question, because the bill says that the question must be clear, and, second, to deal with the situation in the event that a government proceeds to do that.

Honourable senators, the vote on Bill C-20 is scheduled for Thursday. In the interests of ensuring that senators who wish to speak to this item on our Order Paper have the opportunity to do so, I suggest that we agree that senators can speak to the main motion as well as to the amendment and that they be voted on in the traditional order.

**The Hon. the Acting Speaker:** Is it agreed that honourable senators be allowed to speak to the motion in amendment as well as to Bill C-20 and that the votes on both will be taken on Thursday?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I believe it has been our tradition that when the Chair is putting a motion to the house, the senator in the chair rises. I may be incorrect. Perhaps the senator now sitting in the Chair will consult with the clerk on that point.

Honourable senators, I agree with Senator Hays, if I understood him correctly, that when debate on the amendment is concluded, the vote on it will be deferred until Thursday when the vote on the main motion is held.

With regard to the amendment proposed by Senator Stratton and seconded by Senator Lynch-Staunton, I disagree with my colleague the Deputy Leader of the Government that this is a

hoist motion. I do not believe it is a hoist motion. A hoist motion is a motion to defer a bill for a defined time. This motion proposes that we accept the argument advanced clearly by Senator Joyal, that being agreement with the objective stated by the government.

• (1700)

He did not agree that the legislative measure, Bill C-20, that is before us will achieve the government's objective. In other words, we are faced with a determination that the objective of the government provided for in the presentation of the bill cannot really be achieved by this bill. The motion that we have before us now is to agree that the objective of the government is supported, that the subject matter of the bill that rests on this objective be submitted to the committee, and that our committee will write a proper bill to achieve the government's objectives.

We are not opposed to the objective of ensuring the integrity of Canada or of ensuring, if there is a referendum, that there be clarity. We are not opposed to clarity. To be opposed to clarity would be anti-intellectual. Everyone is in favour of clarity.

We are concerned with a number of principles that we believe to have been not intended by the drafters of this bill. We believe that they did try to follow the guidance given and the principles outlined in the advisory opinion of the Supreme Court in the Quebec reference case. However, in actual fact, if you read paragraphs 100 and 101 of the advisory opinion, the bill, in its second preambular paragraph says, for example, that it would be for elected representatives to determine the clarity of the question and a clear majority. The court did not say that. The court said that it would be for political actors. The drafters have let the government down, and it is in black and white. I think it would be very easy for the committee to correct that, to bring what is clear in black and white in the advisory opinion of the court and what is written in the bill to say the same thing. Right now, they do not say the same thing.

Furthermore, it is my opinion that the Government of Canada has no intention of seeing Canada broken up or torn apart. I would find it very hard to believe that the Government of Canada fundamentally accepts as an objective the breakup of Canada. However, the way it is drafted, the procedure and the steps that are laid out in this bill would give statutory expression to the breakup of Canada. I argued that Parliament only has the mandate to pass laws that, in the judgment of the two Houses of Parliament, are in the public interest of Canada. I believe that it is a *prima facie*, obvious proposition that the breakup of Canada is not in the public interest. Therefore, I find myself unable to ascertain where Parliament has the authority to pass a law that would lead to the breakup of Canada, which is exactly what the words to be found in Bill C-20 lead to.

Therefore, attempting to be creative, attempting to do the right thing, not only in terms of the institutional relationships of our bicameral Parliament but also for us as senators, to secure and maintain the integrity and the unity of Canada, Senator Joyal very calmly laid out for us that the present bill in his analysis is resting on premises that speak to the divisibility of Canada. He, on the other hand, was careful to point out that there is an objective, which is the unity of Canada, to which he wishes a piece of legislation be brought forward. I share that objective.



This motion is doing nothing more than saying, "Send this subject matter to the committee and let the committee examine that subject matter and report back to this house with a legislative proposal that will achieve the government's objective, that will rest upon principles of the indivisibility of Canada, that will rest on the principles of democracy, federalism, the rule of law, and the protection of minorities."

Those are the principles that the Supreme Court identified in its advisory opinion, principles that are also the cornerstone of the great federation of the United States of America. Their Supreme Court, in the case of *White* in the 1800s, concluded that that federation, resting on the principles of democracy, federalism, and the rule of law, is indivisible. So also is the third great federation with which we share the North American continent, the United States of Mexico. In their constitution, Mexico is indivisible.

It seems to me, honourable senators, that the way out of the conundrum that Senator Grafstein eloquently spoke of on Thursday, the way out of the dilemma in terms of the relationship of these two houses of our Parliament, is to adopt this motion. I am of the view that any subgroup of this house, any committee of this house, composed of a select number of honourable senators is more than capable of doing the job at the level of expertise that is the tradition of this house. I believe that the committee would be able to report back with a bill that would achieve the government's objective. Let us not be stampeded by the petulance of anyone. Let us not be misguided by a false timetable. Let us do in a calm and deliberate fashion the kind of study and the kind of legislation drafting of which we are capable. It is only by adopting that attitude, that *modus operandi*, that we will serve the Canadian people as they deserve to be served.

Therefore, honourable senators, I support this motion in amendment.

**Senator Hays:** Honourable senators, would the Honourable Senator Kinsella permit a question?

**Senator Kinsella:** Of course, honourable senators.

**Senator Hays:** The motion may not be a classic hoist motion, but it seems to me that it has the same effect, in that the bill, if it were passed, would be withdrawn and its subject matter referred to the Standing Senate Committee on Legal and Constitutional Affairs.

I wonder if Senator Kinsella could comment further in terms of the consequence of supporting the amendment. There is a procedure, as I recall in the other place that is conducive to a committee essentially drafting a bill, taking bare bones. In this case, Senator Stratton's motion would see the subject matter of Bill C-20 referred — in other words, starting from square one, holding hearings if thought advisable, and then creating a bill.

I wonder if the honourable senator could tell us how long he envisages such a procedure taking. Would the honourable senator not agree that the time frame within which that might play out and be seen to an end would be unreasonably long, in the context

of the commitment of one of our provincial governments to hold a referendum possibly on very short notice and in the very near future?

• (1710)

**Senator Kinsella:** I thank the honourable senator for his question. It is a fair one. I invite honourable senators to review the process that is involved in drafting a bill in this town. As honourable senators know, a group of civil servants get together and they throw ideas around over coffee. They meet with the minister and say "Here is the general approach." The minister then works with his or her officials and a draft proposal is put together. In general terms, it is put together within the framework of a document that is brought to cabinet, but the die is immediately cast.

Once that die is cast and the minister of the Crown rises in the other place and brings forward the bill, it takes a very strong and secure minister to back away from a legislative initiative that he or she has tabled in the House of Commons. In the past, we have seen those strong, confident, self-assured ministers who, upon learning of a deficiency in their proposed legislation, accept amendments. Indeed, there have been many cases in which the amendments that ministers embraced came from this chamber.

Honourable senators, the whole process with a new bill takes a matter of a few months. We have seen legislation, however — and emergency back-to-work legislation is one example — where that is done over a two- or three-day period.

There has been a sophisticated debate in this house. It is a pity that the same level of debate did not occur in the other place. We understand the political dynamics that operate there, but the reality is that we have canvassed and have adduced the principles that are involved here. In my estimation, I believe that our committee, based upon the record of debate in this place at second reading, could achieve an analysis that would lead to a report that would contain a draft bill in a matter of weeks — not a long time, but well before any referendum, from what I can ascertain, from the Government of Quebec in particular. There would be plenty of time.

We share the view that we do not want to be in the situation in which we found ourselves a few years ago. Our committee can do it. The important thing is that we draft a proper piece of legislation to achieve this objective. I do not know who was involved in the drafting of this bill at the level of the officials, but it is full of the inconsistencies that we have identified in this house, just in terms of comparing the Supreme Court's opinion and the draft legislation. There are *prima facie* inaccuracies within the grand principles. We cannot shy away from the analysis that Senator Joyal has given us. Based on this, I suggest that our committee would be able to draft a piece of legislation. It is important that we in this house realize that we do not have to take and simply modify the model that comes with a piece of legislation from the other place. As an equal legislative assembly, we have the right — perhaps in this instance the duty — to rewrite the model as indicated.

Debate suspended.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** I rise now, honourable senators, to turn to the matter of our business. Looking at the clock, in 15 minutes the proceedings will be suspended for the ringing of the bell.

We have not gone far on the *Order Paper and Notice Paper*, honourable senators. I wish to ask for leave at this time that when the vote is taken at 6 p.m. and we are in our place, we continue our sitting by not seeing the clock so that we can continue with other matters on the Order Paper. I hope we can return to the main motion. I shall ask that the question on Senator Stratton's amendment be voted on Thursday when we vote on Bill C-20. Senator Cools may wish to start her speech or she may wish to adjourn. That will be her choice. The main reason I am rising is to ask for leave not to see the clock when we are here in the chamber after 6 p.m. and after the vote so that we can proceed with matters on the Order Paper.

**The Hon. the Acting Speaker:** Honourable senators, is it agreed that we will not see the clock at 6 p.m.?

**Hon. Senators:** Agreed.

**Hon. Anne C. Cools:** Honourable senators, might I put a question to the Honourable Senator Hays? The bells will ring at 5:30 p.m. I am quite prepared to speak today, but I was not expecting to speak to an amendment. To the extent that I have not even seen the amendment and I am not seized of it, I shall be prepared to speak after the vote rather than beginning right now to speak to an amendment about which I do not know in detail, only to be interrupted.

If Senator Hays and honourable senators would agree, I would not mind a few minutes to take a look at Senator Stratton's amendment. I would then be ready to speak on that amendment following the vote at 6 p.m. — that is, if we are to sit after the vote. I am not sure what our intention is at this time. Perhaps Senator Hays can clarify that matter.

**Senator Hays:** On the question of house business to which I was given leave to comment, I shall look to Senator Kinsella, who will speak for the opposition. Certainly, I have no objection to resuming debate on Bill C-20 when we return to the Order Paper following the vote.

Honourable senators, we could suspend now in anticipation of the bell at 5:30 p.m., or we could continue with another matter and then return to the order resuming debate on Bill C-20. I am not sure what Senator Kinsella would prefer. I propose that we proceed to Order No. 2 and hear from Senator Pearson.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Agreed.

**Senator Hays:** We could then return to Order No. 3, Bill C-20, when we return after the vote.

Could the Table call Order No. 2, please?

**The Hon. the Acting Speaker:** Honourable senators, it is my understanding that we are now suspending further debate on Bill C-20 and that we will move to other items on the Order Paper. We will return to the debate on Bill C-20 following the vote. Is that the understanding, honourable senators?

**Senator Hays:** Not quite, Your Honour. We are proceeding with Order No. 2 and deal with it between now and the ringing of the bells, which I think we can do. If we cannot, then Senator Pearson can conclude her remarks after the vote, following which we will revert to Bill C-20.

## NATIONAL DEFENCE ACT

### BILL TO AMEND—THIRD READING—DEBATE SUSPENDED

**Hon. Landon Pearson** moved the third reading of Bill S-18, to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities).

She said: Honourable senators, when Bill S-18 was before the Standing Senate Committee on Foreign Affairs, some senators raised questions about processes relating to international agreements and others were interested in how youth are engaged in the Armed Forces. Both these issues deserve fuller discussion, so let me take advantage of third reading debate to amplify comments that I made during second reading debate and add a few more that I hope will be helpful in persuading all senators to support this small but significant bill.

• (1720)

First, why this bill and why now? To answer, I need to clarify the relationship between Bill S-18 and the optional protocol to the United Nations Conventions on the Rights of the Child.

Second, why do 16- and 17-year-olds choose to join the Canadian Armed Forces, a choice, incidentally, that I support, provided, of course, that they cannot be sent to fight until they are 18?

The first issue is primarily a process issue because it is not currently the practice in Canada to recruit children and to allow them to go to war. Of course, 16- and 17-year-olds do not like to be called children. The Convention on the Rights of the Child, adopted by the United Nations in 1989 and ratified by Canada in 1991, nevertheless defines a "child" as a person under the age of 18 years unless, under the law applicable to the child, majority is attained at an earlier age.

It was not possible during the negotiation of the articles of the convention to reach agreement on the age of 18 as a standard for recruitment into armed forces or for participation in hostilities.

As a result, article 38 of the convention sets 15 years as the minimum age for recruitment into an armed force and for direct participation in hostilities.



Within three years of the adoption of the convention, there were renewed efforts to address the issues of age recruitment and participation. First, the Committee on the Rights of the Child, which was set up to monitor implementation of the convention, recommended the adoption of an optional protocol to raise the age to 18. Then the World Conference on Human Rights in 1993 called for action in this area. In turn, the Commission on Human Rights, in 1994, established an open-ended working group, open to all countries, to develop a draft optional protocol.

The working group first met in 1994 and continued its work until January 2000. The term "optional" refers to the fact that a state can continue to be a party to the Convention on the Rights of the Child without adopting this or the other optional protocol to the convention on child prostitution, child pornography and the sale of children. It is hoped, of course, that all states eventually will do so.

In January 2000, the international community reached consensus on a text for an optional protocol on children in armed conflict. This protocol was adopted by the Commission on Human Rights in April, as was the other protocol. Both are expected to be adopted by the United Nations General Assembly in early June.

The Department of Foreign Affairs and International Trade is seeking authority to sign the optional protocol to the Convention on the Rights of the Child on involvement of children in armed conflict when it is open for early signature and ratification at the special session of the General Assembly entitled "Women 2000: Gender Equality, Development and Peace for the 21st Century," to be convened on June 5 and 6, 2000, in New York.

The Department of Foreign Affairs and International Trade is unable to seek authority to ratify the optional protocol, which would allow Canada to bring the protocol into force and implement it in Canada, at this early session because Bill S-18, which amends the National Defence Act, to incorporate into law the objectives of the optional protocol, will not yet have received Royal Assent. However, Canada intends to sign the optional protocol with the declaration indicating that our domestic legislation is in the process of being amended to ensure compliance with the terms of the optional protocol and that Canada intends to ratify it as soon as this amendment receives Royal Assent.

Norway, a like-minded country on this issue, is in the process of amending its legislation in a similar fashion to remove the current authority that they have to conscript 16- and 17-year-olds, which, incidentally, we do not do. Children at that age will still be able to volunteer.

To return to Canada, we can ratify a binding international legal instrument, such as a convention or protocol, but before we do so it is essential that Canadian domestic legislation be in full compliance with the obligations contained in the instrument. It is not sufficient that our policies are in compliance. The obligations must be enshrined in our law. Under the 1969 Vienna Convention on the Law of Treaties, each party to a convention or protocol

must be able to certify that the convention or protocol can be implemented before it is ratified.

For Canada, as well as for other common-law countries, signature of an international legal instrument amounts to a moral and political commitment to complete all of the necessary legislative amendments to implement the instrument and to ensure compliance with its international obligations. Subsequent ratification of an international instrument is a certification that Canada's domestic legislation is now in full compliance with the terms of the instrument. This distinction between signature and ratification is reflected in the rules and procedures of the Privy Council Office, which requires compliance of our domestic legislation before seeking authority to ratify an international legal instrument, unless our domestic legislation was already in full compliance with its terms.

In its present form, the National Defence Act is not in full compliance with the provisions of the optional protocol. Specifically, the act does not prohibit members of the Canadian Armed Forces who are under the age of 18 from deployment and/or participation in armed conflicts. Accordingly, the amendment to the act as proposed in Bill S-18 is necessary in order to incorporate into law a policy by which the Canadian Forces now abide and Canada's decision to abide by the obligations arising from the optional protocol.

Once Bill S-18 is approved and receives Royal Assent, the Department of Foreign Affairs and International Trade will be in a position to seek authority to ratify the optional protocol.

Honourable senators, I should like to address the question as to why young Canadians choose to join the Canadian Forces.

As part of the recruitment process, anyone who wishes to join the Canadian Forces at any age must pass through a series of interviews and tests. This process, and the regular, ongoing monitoring of our military personnel, reveals that young Canadians have a variety of motives for joining the Canadian Forces. Officials from the department gave me a sense of what they were hearing from young people who join the forces. Let me quote as an example a 17-year-old male recruit and non-commissioned member of the Canadian Forces in his third week of basic recruit training at the Leadership Recruitment School at St-Jean, Quebec:

I joined the military because I found that school did not challenge me physically or mentally. I decided that as soon as I earned enough credits it would be the next step in bettering myself. Also, I was in cadets and had many positive experiences including going on an exchange to Scotland. I like the challenge that the military brings, both physical and mental.

In general, the reasons young Canadians give for wanting to join the forces are to serve their country; to travel, both in Canada and abroad; to develop new skills; to pay for post-secondary education by serving in the reserve; or to start a military career. Characteristically, they express a strong desire to be considered full members of the forces from the time they join.

This is in fact what happens. From the moment they enrol, they are integrated into the overall operational structure of the Canadian Forces. That is to say, they become a functioning part of the system like any other member.

To this end, they participate in the same training, team-building and esprit-de-corps-enhancing activities as other members of the Canadian Forces. They are subject to the same disciplinary system as other members of the Canadian Forces. They earn the same benefits, entitlements and protections as other members of the Canadian Forces.

There is, of course, one critical exception to this integrated approach. Members under the age of 18 are prohibited from being deployed to theatres of hostilities, areas where conflict is either underway or deemed likely.

Honourable senators, the situation of young Canadians under the age of 18 who join the Armed Forces is totally different from the practice of forcibly recruiting child soldiers into regular or insurgent armed groups in many parts of the world. Young Canadians are not constrained in any way from making a free choice in the matter. All they need do is present proof of age and a parental consent and pass the recruitment test to ensure they are suitable.

In other parts of the world, children who join in armed conflicts, even if they claim to have done so willingly, have frequently undergone some form of coercion. They may actually have been abducted. More often, they are there because their other life choices have been so constrained. They are living in great poverty. They have little or no education. Employment is minimally available. There are family and cultural pressures.

A young rebel soldier in Colombia recently explained to a journalist that, at the age of 12, she had seen uniformed women marching through her village carrying guns. She thought they looked glamorous and powerful. At the age of 15, she joined them. This speaks volumes about the limitations she felt to her own life as a *campesina*.

I do not believe, in spite of the eloquent appeals of World Vision and Amnesty International who spoke to us in committee out of their direct experience with child soldiers who had been forcibly recruited, that we should deny young Canadians the opportunity they seek to serve their country and local communities, to develop skills that will prove valuable throughout their adult lives, and to earn a little money and some benefits along the way.

• (1730)

I am not persuaded that limiting their choices would contribute in any way to diminishing the evil associated with children exploited in areas of conflict. What is important in my view is to leave the opportunity of service open to our young people while keeping them out of harm's way, as is already our practice and will soon hopefully be our law, while at the same time as we work to address all the other issues that make young people vulnerable in areas of armed conflict thereby limiting, sometimes fatally, all of their life choices.

[ Senator Pearson ]

Honourable senators, we must strive to reduce poverty, to improve education and employment opportunities, and to combat the discrimination that puts girls, the disabled, and the indigenous and minority populations at particular risk for exploitation. We must also give young people other ways to contribute to the solution of what for many are issues of injustice and oppression. These are huge challenges for us all.

**The Hon. the Speaker:** Honourable Senator Pearson, I regret that I must interrupt you.

**Senator Pearson:** I have just two lines left to read, honourable senators.

**The Hon. the Speaker:** Is leave granted, honourable senators, to allow the Honourable Senator Pearson to complete her remarks?

**Hon. Senators:** Agreed.

**Senator Pearson:** Honourable senators, these are huge challenges for us all. Nevertheless, the optional protocol is a piece of this puzzle. I am personally satisfied that, with the amendments to the Defence Act contained in Bill S-18, we have struck the right balance between what we owe to our own young people and what we owe to their contemporaries in other parts of the world. I urge honourable senators to support this bill.

Debate suspended.

## SPECIAL SENATE COMMITTEE ON BILL C-20

### MOTION TO APPOINT COMMITTEE ADOPTED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Robichaud, P.C. (*L'Acadie-Acadia*):

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference;

That, notwithstanding Rule 85(1)(b), the committee be comprised of fifteen members, including:

Senator Joan Fraser  
Senator Céline Hervieux-Payette, P.C.  
Senator Colin Kenny  
Senator Marie P. Poulin (Charette)  
Senator George Furey  
Senator Richard Kroft  
Senator Thelma Chalifoux  
Senator Lorna Milne  
Senator Aurélien Gill;

That four members constitute a quorum;



That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee.

And on the motion in amendment by the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Robertson, that the motion of Senator Hays be amended by adding:

"That upon completion of its report and prior to its tabling in the Senate, the committee forward the report to the Standing Senate Committee on Legal and Constitutional Affairs for opinion and comment on the bill, in particular its constitutionality."

**The Hon. the Speaker:** Honourable senators, it being 5:30 p.m., pursuant to the order adopted by the Senate on Thursday, May 11, 2000, it is my duty to interrupt the proceedings to dispose of all questions necessary on the motion of Honourable Senator Hays to appoint a special committee on Bill C-20.

It was moved by the Honourable Senator Hays, seconded by the Honourable Senator Robichaud, P.C., that a special committee of the Senate be appointed to consider, after second reading, the Bill C-20 —

**An Hon. Senator:** Dispense!

**The Hon. the Speaker:** It was then moved in amendment by the Honourable Senator Lynch-Staunton, seconded by the Honourable Senator Robertson, that the motion of Senator Hays be amended by adding:

"That upon completion of its report and prior to its tabling in the Senate, the committee forward the report to the Standing Senate Committee on Legal and Constitutional Affairs for opinion and comment on the bill, in particular its constitutionality."

Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motion in amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion in amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen.*

**The Hon. the Speaker:** The bells will ring for 30 minutes. We will vote at six o'clock. The first vote will be on the motion in amendment and the second vote on the main motion.

Call in the senators.

• (1800)

**The Hon. the Speaker:** Honourable senators, the question before the Senate is the motion in amendment by the Honourable Senator Lynch-Staunton.

Motion in amendment negated on the following division:

#### YEAS

#### THE HONOURABLE SENATORS

Andreychuk	Johnson
Atkins	Kelleher
Beaudoin	Kelly
Bolduc	Keon
Buchanan	Kinsella
Carney	LeBreton
Cochrane	Lynch-Staunton
Cogger	Nolin
Cohen	Oliver
Comeau	Rivest
Corbin	Roberge
DeWare	Robertson
Di Nino	Rossiter
Doody	Simard
Forrestall	Spivak
Grimard	Stratton—33
Gustafson	

## NAYS

## THE HONOURABLE SENATORS

Adams	Joyal
Austin	Kenny
Bacon	Kirby
Banks	Kroft
Boudreau	Lawson
Bryden	Mahovlich
Callbeck	Mercier
Carstairs	Milne
Chalifoux	Pearson
Christensen	Pépin
Cook	Perrault
De Bané	Perry Poirier
Fairbairn	Pitfield
Ferretti Barth	Poulin
Finestone	Poy
Finnerty	Robichaud
Fitzpatrick	(L'Acadie-Acadia)
Fraser	Robichaud
Furey	(Saint-Louis-de-Kent)
Gill	Rompkey
Grafstein	Stollery
Graham	Taylor
Hays	Watt
Hervieux-Payette	Wiebe—46

## ABSTENTIONS

## THE HONOURABLE SENATORS

Cools  
Roche—2

**The Hon. the Speaker:** Honourable senators, we are back, then, to the main motion. Will those honourable senators in favour of the motion please say “yea”?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion please say “nay”?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the “yeas” have it.

*And two honourable senators having risen.*

**The Hon. the Speaker:** Call in the senators.

What is your wish, honourable senators, for this vote?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I think the order of the Senate is that we dispose of all votes at this time. Accordingly, we are ready to proceed with the vote.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Agreed.

**The Hon. the Speaker:** Is it agreed that it be a standing vote?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** In that case, honourable senators, we must open the door for a moment in case there are any senators outside who missed the first vote.

Motion agreed to on the following division:

## YEAS

## THE HONOURABLE SENATORS

Adams	Hervieux-Payette
Austin	Joyal
Bacon	Kenny
Banks	Kirby
Boudreau	Kroft
Bryden	Lawson
Callbeck	Mahovlich
Carstairs	Mercier
Chalifoux	Milne
Christensen	Pearson
Cook	Pépin
Corbin	Perrault
De Bané	Perry Poirier
Fairbairn	Poulin
Ferretti Barth	Poy
Finestone	Robichaud
Finnerty	(L'Acadie-Acadia)
Fitzpatrick	Robichaud
Fraser	(Saint-Louis-de-Kent)
Furey	Rompkey
Gill	Stollery
Grafstein	Taylor
Graham	Watt
Hays	Wiebe—45



## NAYS

## THE HONOURABLE SENATORS

Andreychuk	Johnson
Atkins	Kelleher
Beaudoin	Kelly
Bolduc	Keon
Buchanan	Kinsella
Carney	LeBreton
Cochrane	Lynch-Staunton
Cogger	Nolin
Cohen	Oliver
Comeau	Rivest
Cools	Roberge
DeWare	Robertson
Di Nino	Rossiter
Doody	Simard
Forrestall	Spivak
Grimard	Stratton—33
Gustafson	

## ABSTENTIONS

## THE HONOURABLE SENATORS

Pitfield  
Roche  
Taylor—3

• (1810)

## NATIONAL DEFENCE ACT

## BILL TO AMEND—THIRD READING

On the Order:

Resuming debate on the motion of the Honourable Senator Pearson for the third reading of Bill S-18, to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities).

**Hon. A. Raynell Andreychuk:** Honourable senators, I wish to speak to Bill S-18 on third reading. I commend the government for finally bringing this piece of legislation before us.

As it was noted, the U.N. Convention on the Rights of the Child was adopted in 1989. Canada had a very strong role in that convention. Particularly, the prime minister of the day, Mr. Mulroney, was closely involved in the negotiations as well as the development of the convention.

Bill S-18 troubles me not because of what is in the bill but because of what is not in it. The bill covers that Canada would ensure not to send persons under the age of 18 years into theatres of hostility. Theatres of hostility can be those within Canada as well as those outside of Canada.

Not to send children into theatres of hostility is something that Canada should be concerned about — not only Canada but other countries as well. Those theatres of hostility can be within Canada, as elsewhere. The current policy of the Department of National Defence has precluded sending young Canadians under the age of 18 into theatres of hostility for some time.

As Senator Pearson rightly pointed out, however, the law did not preclude this. Therefore, it was necessary to pass legislation in order that Canada could ratify the convention, or the "optional protocol," as it is called.

It is important that Canada exert its leadership in this area. It does so to a certain extent with this bill because Canada will be in line and sufficiently prepared for due compliance.

Honourable senators, at this point, I wish to raise the point that this is only one half of the picture. One of the most devastating things around the world is the recruitment of young children. We know that today in Sierra Leone, we know from past experience in Uganda, and we know from the situation in Sudan, children are used. They are the mechanics of operation in many theatres around the world. We know also that, in the Balkans, young people were not precluded, that they were intimidated and their families held hostage, to get children into theatres of hostility.

Young people, by virtue of being young, do not have the full maturity to make the decisions as to whether to enter into war is correct or not. Young people, particularly in Africa and parts of Asia, would tell you that the choices were not theirs. They were certainly put under the gun to use a gun.

Consequently, it was appropriate for Canada, through many decades, to bring light to this issue. It was appropriate for Canada to say that not only should young people not be in theatres of hostility, but also that they should not be recruited when younger than 18 years of age. We have tried to bring this to the attention of other countries.

Some people say that it is not the country or the leader that recruits young people. I am afraid that around the world there are countries where the leaders are manipulating young people and recruiting them into theatres of hostility.

We also know that those in opposing camps who do not carry the title of a leader, such as president or prime minister, are leaders of factions, tribes, and groupings. These people could some day be the future acknowledged leaders in some countries.

Liberia provides an example. Mr. Taylor was, in fact, a rebel who we did not recognize, a rebel who used hostilities as a means of furthering his own ends. He is now a legitimate leader of Liberia.

It is important for us to exert leadership and to exert pressure on all people. It is important to start a system in the world that will say, "No child under any circumstances under the age of 18 will be employed in any theatre of hostility, whether it is war, neighbour to neighbour, or whether it is war within one country."

I part company with Senator Pearson at this point. My concern is that this bill did not outlaw the recruitment of young people under the age of 18 in Canada. There was a justifiable reason in the eyes of the government, and Senator Pearson has pointed it out. We do have young people aged 16 and 17 years who are part of the Canadian Armed Forces. Basically, they are those going to Royal Military College or in non-hostile theatres.

I think it is an admirable employment technique. I think young people who wish to choose the military should receive the right training at the right time. However, there should be other ways that we could accomplish having 1,000 young people involved in what would lead to a military career, without designating them as part of the full complement of the Department of National Defence, that is, being a soldier.

Norway has found a way around it. Canada could have been ingenious. If we had taken a leadership role and taken the extra effort to create a complementary act, a complementary unit for these young people aged 16 and 17, and clearly delineated that they would not be part of the regular soldiers until they were 18, we could have accomplished both ends. That is the direction in which many other countries are going.

We do not want to preclude young people from receiving training and the kind of skills they need, the kind of discipline they need under the age of 18. However, we should not want to send a signal around the world that it is acceptable to recruit these young people.

There is a fine line in saying, "We shall recruit under 18 years of age, but only for these fine, laudable purposes." Once that door is opened, every one will find some justifiable reason to recruit below the age of 18 years into regular service. Therefore, we open the door to every nefarious country and grouping to start the recruiting.

World Vision and Amnesty International, and a coalition of some other NGOs, were very disappointed, as was I, that Canada capitulated. Until very recently, Canada stated that no one under the age of 18 years would be recruited, that a way to change this would be found. However, Canada capitulated, and continued to put this bill forward for the active service in theatres of hostility, as the preventive part, and not the recruitment. We have lost our moral leadership around the world on this issue of child soldiers.

There was not a question of what would have happened in Canada had we maintained our position. Compliance exists within Canada, and we are doing it correctly.

We have lost our international moral leadership. Therefore, we have lost some of the edge for every time we speak on issues of child soldiers and every time we speak on atrocities in other

countries. Canada has lost some of the leadership that we would have had.

If Canada does not draw the line, other countries who do not stand with the same reputation and the capabilities will begin to chip away at this recruitment.

• (1820)

It will be recruitment for only those purposes, but those purposes will go closer to the theatres of hostility. We know if we allow recruitment even in areas that are not hostile now, they may be at a future date. Thus, there is a ready army of young people who will be dragged into theatres of hostility.

A life is a life is a life, and a child is a child a child. We cannot take the position that this bill does, that somehow or other there are good things happening for young people in Canada to be part of the military service under the age of 18 and we should not disrupt that, even if it means losing moral ground elsewhere. I do not believe that that is the appropriate way for Canada to act. Therefore, I appeal to the government to reconsider its position.

Honourable senators, I shall not hold up the bill. I shall vote for it because I believe it is important that Canada at least sign the optional protocol. However, I encourage Canada to take that extra step. I know it will be difficult for the Department of National Defence to set up a separate system that clicks in at age 18 should certain people decide to go on in military service beyond the age of 18 in order for their benefits to accrue to them for the years of 16 and 17, but it is morally important that Canada reclaim its position as a leader on children's issues, as a leader on the issue of child hostilities, and as a leader under the United Nations Convention on the Rights of the Child. To leave recruitment out has left us wanting, and this is an error that must be corrected in the future. I intend to pursue it, but I shall not hold up the bill at this time.

**Hon. Colin Kenny (The Hon. the Acting Speaker):** Is the Honourable Senator Pearson asking a question?

**Hon. Landon Pearson:** Honourable senators, I have one question before the vote on the question.

The honourable senator misheard what I said about Norway. My information from Norway is that their legislation will be virtually the same as ours. What they are removing is their authority to conscript, something which we do not do. Sixteen and 17 year-olds will still be able to volunteer for military service.

**Senator Andreychuk:** Honourable senators, I thank Honourable Senator Pearson for that comment. She knows that we asked for more information in the committee, but the chair did not allow us to have it. Perhaps this is something else I could clarify.

Some of us went on division in the committee because we wanted the extra information and could not get it. We wanted to receive it.



What I understand, though, from information that has been given to me and given second-hand, is that, yes, Norway will be seen to be moving toward less recruitment, whether it is on conscription or otherwise, and that they will continue to look at ways and means to fully comply with the intent that was put forward in 1989 that children would not in any way be near military service. I cannot speak for the Norwegian government.

The point I was making is that we could accomplish with young people what we need to do. The cadet program, for example, is excellent. We need these kinds of programs in Canada. These programs have a military flavour, but the participants are not regular soldiers. I do not believe that individuals who go to the Royal Military College are in any way precluded from a fine military service after the age of 18.

If Canada has chosen 18 as the age of majority, that is the age we should signal to the rest of the world. Consequently, leaving the door open, I believe we lose the moral ground. I am inclined to agree with Vision Canada and those who work overseas that we lose ground because now we cannot say with the same moral conviction to all of the perpetrators around the world, "Don't you do it," because they can point out that we are doing it. We then have to reply, "But these are fine, laudable reasons." It puts us into the debate. I would have liked to have been in leadership without the debate. That is where the honourable senator and I disagree.

**Senator Pearson:** I shall leave it on the record as a disagreement between the two of us and proceed to the vote on the question.

**Hon. Eymard G. Corbin:** Honourable senators, I have a few things to say.

This is a short bill. It is a one-liner. People sometimes take one-liners lightly and cannot understand that parliamentarians would want to protract the examination time of bills such as this. It would have been a wonderful opportunity to question the government on its policies with respect to this matter. We send young men, and also young women, to theatres of conflict, and the military personnel who appeared as witnesses did not want to broach the question of the impact on their psychological health, especially. They told us they were not empowered to deal with that issue. I believe that is part and parcel of what we are looking at today.

As a member of the steering committee, I did not even question whether a minister or two ministers would appear, but they did not. They sent in functionaries, people from National Defence. They sent someone from the Judge Advocate General's office, but in terms of the more political, fundamental debate, there was no one there who could really satisfy us in terms of the questions we put to them.

I was particularly bothered by the fact that the Armed Forces was taking a business approach in dealing with the lives of young Canadians, both young men and young women, and putting them in a theatre of conflict. For example, they referred to recruitment as a competition for manpower, or terms to that effect, and that

they wanted to exploit that manpower in such a way as to get value for bucks.

I do not know if the mentality in DND has changed to any great extent, but that is not the way we parliamentarians look at the risks involved in putting very young people in theatres of conflict. I share many of the concerns expressed by Senator Andreychuk. However, the next time around, a one-line bill will not get an easy ride in committee. We shall spend much more time on it. We will insist that ministers come to defend their departmental policies and practices. We shall comment much more than we have been allowed to understand on the broad inferences of a treaty of this nature.

**Hon. Raymond J. Perrault:** Honourable senators, I have been working with Canada's peacemakers, who have undergone unbelievable stress in their responsibilities. I have met with them and listened to their views. Let me tell honourable senators, this is a very serious problem.

I was down at the United Nations when we had the joint committee on foreign affairs. We were told there that, without question, Canadians are the best peacemakers in the world and they wanted us to know that. Some honourable senators who were there with me will remember those remarks. However, there is a price.

• (1830)

Over the past year, eight — and perhaps even more — of our peacekeepers have committed suicide. They have been unable to cope with the stress associated with their responsibilities as peacekeepers. They are sickened and psychologically devastated by seeing youngsters murdered before their eyes.

We need a major program in this country to help people who are placed under stress of that kind. The Department of Veterans Affairs and the Department of National Defence have been taking some useful steps to deal with this serious problem.

Two days ago, I visited a Canadian war cemetery in Germany, and I hope to speak to honourable senators about my visit. Some 17,000 young people, many of them 18 and 19 years of age, were shot down in World War II. The real impact of war on humans is absolutely dreadful.

We saw the tombstone of 19-year-old twins from Ontario who were shot down on the same day. The sorrow and grief caused by the loss of people in the Armed Forces is unbelievable.

As was said earlier, we must be more concerned about the people we are sending forth to bring peace to the world, because they are under unimaginable stress.

**Hon. J. Michael Forrestall:** Honourable senators, I feel somewhat constrained in entering this debate. The subject matter was dealt with by a committee that is somewhat removed from my day-to-day concerns. However, something that Senator Andreychuk, Senator Perrault and Senator Corbin have said has brought me to my feet.

I have been to Bosnia. My concern has nothing to do with the age of individuals that we send on these missions. It has to do with how we as a nation, and the responsible authorities, react to the responsibilities given them.

Those who follow defence matters will know of my deep and continuing concern about the woefully inadequate level of care extended to service people, and in particular to the reservists without whose help Canada would not have been able to participate in the number of peacekeeping, peacemaking, peace preserving, and peace restoration missions that we have. It is no longer only peacekeeping. It has gone well beyond that.

We do not extend to our young men and women, on their arrival home, the professional counsel and guidance that they need. Senator Perrault spoke of suicide. I know of what he speaks. I know that Senator Rompkey shares this view, because we have discussed it. It is important that we as a nation understand that equally as important as the age of the people we call upon to represent us in theatres of war is our obligation to provide counselling when these people return. One cannot come back from that hospital in Bosnia and resume one's former duties, after seeing the atrocities that were perpetrated upon fellow human beings. As a nation, we must be conscious of what we are doing to these people, some of whom have been on five or six missions abroad. When they come home, they are on their own. Suicide is the grace of God. Sometimes it takes a great amount of courage to take that step, which might have been avoided had there been in place adequate professional counselling.

God knows that we hold ourselves out to be the world's greatest peacekeepers. However, the one thing we overlook is taking care of our own people. We send them into conditions of war and atrocity.

I talked to Captain Jackson, who has just returned from Sierra Leone. There has been no counsel for them. There has been no place they can turn. They take off their uniforms a week or 10 days after living with the threat of being shot, and they have to go home to their families and return to their former lives.

I am concerned about the protocol. Honourable senators, it is far more important that Canada understand and be part of the sacrifice that we ask of these young men and women. We ask them to play their part, and we should play our part. Part of that has to be a consuming care for these people and their families when they return from these horrible situations.

• (1840)

Honourable senators, perhaps it is now time for us to find a way to establish the oversight committee, so that these matters might be reviewed, not in the light of any pressures or single incident but, above all, in our concern for humanity and our concern for these young men and women. It is extremely difficult to face the family of a young man who did not understand what drove him to the ultimate sacrifice. We can do better.

**The Hon. the Acting Speaker:** It is moved by the Honourable Senator Pearson, seconded by the Honourable Senator Adams, that the bill be read a third time now.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

# **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference:

And on the motion in amendment of the Honourable Senator Stratton, seconded by the Honourable Senator Lynch-Staunton, that the motion be amended by deleting all the words after the word "That" and substituting the following therefor:

Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference, be not now read a second time but that the Order be discharged, the Bill withdrawn and the subject matter thereof referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, we have an amendment before us. I heard Senator Kinsella indicate that he was in agreement for a speech either on the amendment or on the main motion, and that agreement being reflected in an order of this house to vote on all matters on Thursday of this week. Perhaps Senator Cools could indicate whether she is speaking to the amendment or the main motion, as I understand the agreement of the house.

**Hon. Anne C. Cools:** Very well, honourable senators. I shall speak to the amendment, then, because that is where we left off earlier today. I think it is much better that the business of the chamber flows in an orderly fashion.

Honourable senators, this bill, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference, is beginning to seem more like mud than like clarity.



Honourable senators, the Parliament of Canada is indivisible. Bill C-20 is a bald assault on Canada's nationhood, on Canadian constitutionalism, and on the Constitution of the Senate. Its propositions are hostile to Parliament, to the Senate, to Canadian sovereignty, and to Her Majesty the Queen. Such propositions cannot be advanced or effected by any bill of this Parliament. I shall show that Bill C-20 is a proposition unknown to Canada's Constitution, to the British North America Act, 1867. I shall show that Bill C-20 is a proposition unknown to the Parliament of Canada.

Honourable senators, I move now to the Supreme Court of Canada's advisory opinion in the 1998 reference regarding the secession of Quebec. We are told that Bill C-20 is an answer to the Supreme Court's advisory opinion. Canada is a nation founded upon the law, law that must be seen by all. In fact, the peculiarity of the British Constitution is that the rule of law enjoins judicial obedience to law and statute. This judicial obedience is one of the foundational and fundamental rules upon which the entire legal system is founded. The law is the law, and no one — not judges or ministers or kings — can take the law into their own hands. In truth, the ancient maxim was that lawyers' and judges' consciences were eased by their observing the boundaries and limits of the law and eased by avoiding attempts to give legal answers to political questions.

To lawyers, judges and citizens, the boundaries of the law are not obscure — they are discernible. Our system of constitutional governance dictates that lawyers and judges must follow the law and are bound by that law in adjudicating legal questions. The Supreme Court said that the British North America Act, 1867, now the Constitution Act, 1867, is silent on secession of any province. It is not silent. It condemns secession by its express provisions, as I have shown in my speech earlier today on the motion to establish the special committee to study Bill C-20.

Honourable senators, the Supreme Court also told us, in the reference re: secession of Quebec, that the court may ignore the law, the BNA Act. It said, at paragraph 148, that:

A superficial reading of selected provisions of the written constitutional enactment ... may be misleading.

The law is unreliable, it is misleading, the Court said. The Supreme Court claimed the legal authority, jurisdiction, to ignore the specific legal enactments of the Constitution Acts, 1867 to 1982, and claimed a legal and constitutional power unknown to the law. The Supreme Court adopted unknown power by its own simple declaration that it had that power. Further, to do so, the Supreme Court, citing itself in the 1981 patriation reference, said, at page 80:

... this Court should not, in a constitutional reference, be in a worse position than that of a witness in a trial and feel compelled simply to answer yes or no.

That is very fascinating. Is there a law or is there not? Yes or no? It is not acceptable to say that there is a law and then add the word "but." That advisory opinion is extraordinary and beyond the law. There is a body of literature developing now about

governance beyond the law. Further, it is contrary to all constitutional law.

I should like to contrast that particular set of statements to the law and the position of the court as it was laid out in 1938. Honourable senators, then Supreme Court of Canada chief justice Lyman Duff, in the 1938 disallowance reference said, at page 78 in the Supreme Court Reports:

We are not concerned with constitutional usage. We are concerned with questions of law which, we repeat, must be determined by reference to the enactments of the British North America Acts of 1867 to 1930 ...

He continued:

Once more, we are not concerned with constitutional usage or constitutional practice.

Honourable senators, conventions and the whole other range of the so-called unwritten constitution are pure politics. The situation of the court was best articulated by Lord Salmon, who upheld the law and not opinion. In the 1971 United Kingdom Court of Appeal's *Blackburn v. Attorney-General*, Lord Justice Salmon said, at page 1383 of the All England Law Reports:

The sole power of the courts is to decide and enforce what is the law and not what it should be — now, or in the future.

Honourable senators, the Supreme Court admitted that its opinion was not guided by the Constitution Act provisions. Had the BNA Act been silent on secession, certainly it would not have been a mystical secret known only to the court and only revealed in the past months. Certainly, we would have known that.

• (1850)

It would not have been a mystery. Sir John A. would have known. Prime Minister Trudeau would have known.

I submit that the court was called upon, and made a legislative and political decision. Having no law to guide them, and unable to rely on the court's own legal pedigree, the court rushed into the arena of politics and legislative lawmaking. Now in Bill C-20, the Government of Canada is asking Canada and the Parliament of Canada to relinquish their own sovereignty, Canadian sovereignty, to enact a legal obligation to negotiate the secession of Quebec, which obligation the court says the government has, based on no law. This is a revolution, unfounded in constitutional law, custom or usage. Professor Henry W.R. Wade in his 1955 article "The Basis of Legal Sovereignty" said, at page 191:

When sovereignty is relinquished in an atmosphere of harmony, the naked fact of revolution is not so easy to discern beneath its elaborate legal dress. But it must be there just the same ...

Revolution, honourable senators, revolution.

Honourable senators know that I had opposed the government in the person of then minister of justice Allan Rock's reference of this question to the court. I relied on former prime minister Pierre Elliott Trudeau's position. Mr. Trudeau, remember, was compelled politically to make a similar reference in 1980 for the patriation of Canada's Constitution. In 1991, Mr. Trudeau, in a retrospective speech given at the opening of the Bora Laskin Library, published in *Against the Current: Selected Writings 1939-1996*, recalled that reference. He spoke eloquently and calmly about the political role that the Supreme Court adopted in its opinion. Mr. Trudeau praised the judicial opinions of Chief Justice Laskin and Justices Estey and MacIntyre, the minority opinion. He condemned the majority, Justices Beetz, Chouinard, Dickson, Lamer, Martland, and Ritchie, saying about the minority view, at page 247:

Had it prevailed over the majority view, I believe that Canada's future would have been more assured.

This is a former prime minister of Canada talking about the role of the Supreme Court in the patriation reference. Not only is he a former prime minister, he was the leader and the gentleman who appointed me to this chamber, and I dare say I have a lot of respect and regard for him to this day.

Condemning the majority judges' decision, Mr. Trudeau said, at page 256:

... they blatantly manipulated the evidence before them so as to arrive at the desired result. They then wrote a judgment which tried to lend a fig-leaf of legality to their preconceived conclusion.

This is not Senator Cools speaking; this is former prime minister Trudeau.

He spoke of Canadian's expectation of courts of law, saying at page 256:

... it seemed to me that Canadians had a right to expect a legal decision from their Supreme Court, rather than some well-meaning admonitions about what was politically proper.

Praising the minority judges' decision and condemning the majority, Mr. Trudeau said, at page 258:

...the minority's more strictly legal approach lends itself far less to political manipulation of the courts than does the majority's. By refusing to go beyond its role as interpreter of the law, the minority avoided the temptation to which the majority succumbed, that of trying to act as political arbiter at a time of political crisis. While there are no doubt differing views of how well the court performed this role in the *Patriation Reference*, it is not a role to which a court of law striving to remain above the day-to-day currents of political life should aspire.

I repeat, Mr. Trudeau, the prime minister at the time of that reference, said that such a political role is not a proper role for a

court. I join Mr. Trudeau in that. The Supreme Court's decision granted, he said, at page 259:

...that latter province a lever to pry itself out of the Canadian constitutional family.

Honourable senators, this Supreme Court decision on secession and its progeny Bill C-20 is the next lever — and it is a powerful lever. For generations, Canada's system of constitutional governance has eschewed litigation the purpose of which is to influence or affect political decisions. Courts and judges were expected to confine themselves to law and questions of law. They were expected to refrain from politics and political questions, as Mr. Trudeau, former Liberal prime minister of Canada, so aptly put it. Mr. Trudeau had relied on Canadian jurists like Sir Lyman Duff who had maintained and upheld this point of view.

Honourable senators, I eschew the court's advisory opinion and I oppose Bill C-20, because I am a Liberal. The major building blocks of liberalism and of the development of liberalism in Canada were two-fold: the upholding of a strong Parliament and the maintenance of a non-politicized court and judiciary. That is liberalism. Bill C-20 is hostile to these foundational dimensions of liberalism. It is also hostile to harmonious Liberal Party relations. The maxim of politics is that governments function as well as their party caucuses function.

Honourable senators, Senator Bernard Boudreau, in his speech on March 23, told the Senate about responsible government in Canada and about the prerogative of the Government of Canada. I challenge Senator Boudreau to examine his mistaken assumptions about responsible government, about the Royal Prerogative, about the role of Parliament, particularly the Senate, and about the role of leadership and political parties in the practice of responsible government. I shall speak as a senator from Ontario, the birthplace of responsible government in Canada. The development of responsible government had been through political parties in the United Kingdom, but especially in Canada. Responsible government's effort was to correct the use and abuse of power by ministers of the Crown in the House of Commons. Responsible government was born of the need to strengthen Parliament and protect Parliament and the people from the executive excesses of cabinet ministers. Our own former colleague Senator John Stewart wrote about crown and ministerial excess in the Commons. In his 1992 book, *Opinion and Reform in Hume's Political Philosophy*, he wrote, at page 250:

Mainly the power of appointment: by adroit use of places the ministers are able to create a majority....To assert that the most sublime constitution the world ever has known depends for its success, even survival, on bribery and corruption may seem blasphemous; nevertheless, that is the plain truth.

I hope honourable senators understand why I opposed the motion for the committee.



**The Hon. the Acting Speaker:** Honourable Senator Cools, I regret to inform you that your time limit has passed.

**Senator Cools:** May I have leave to continue, honourable senators?

**The Hon. the Acting Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Cools:** Honourable senators, responsible government was developed to correct that corruption. Contrary to what Senator Boudreau has told us, the important feature of responsible government is the management and control of executive excess and executive power, and the freeing up of Parliament from ministerial manipulation — in parliamentary language, corruption.

• (1900)

Honourable senators, the position of the prime minister in responsible government is great. About the prime minister's regular relationship to Parliament, Alpheus Todd, in the 1892 edition of *Parliamentary Government in England: Its Origin, Development, and Practical Operation, Volume II*, quoting former United Kingdom prime minister William Gladstone, said, at page 13:

He must be loyal both to his sovereign and to his colleagues, as well as to parliament.

The prime minister owes Parliament, both the House of Commons and the Senate, a duty of loyalty, of fidelity. About the cabinet and the ministry, Todd quoted Lord Macaulay, saying, at page 2:

The ministry is, in fact, a committee of leading members of the two Houses.

Responsible government is the notion of subjecting the cabinet of both Houses to Parliament, not the subjection or subordination of Parliament to the cabinet and the prime minister. Parliament means two Houses, the Senate and the Commons.

Honourable senators, recently on Bill C-20, the government has said a lot, both in and out of this chamber, about responsible government in Canada and the Senate's role therein. Most of it is wrong, some of it is mistaken, and some of it is downright misleading. I cannot respond to all, but I shall respond to some.

On March 23, Senator Boudreau, the sponsor of the bill, minister of the Crown and Leader of the Government in the Senate, told us that the management of separation, secession, of one or all of the provinces is a matter reserved solely to the cabinet, and that the Senate, per the Supreme Court's decision, is not included in the court's own careless, inexact, untidy and non-curial term "political actors." He said at page 813 of the *Debates of the Senate*:

It would, of course, be difficult to fit the Senate into this group of political actors...

Senator Boudreau has defended the Government's alienation of the Senate in Bill C-20 in consideration of important questions of national unity and asked the Senate to concur with him. He will insist on Liberal Party loyalty to obtain it. This is an infringement.

I would remind him, honourable senators, of another principle of responsible government, being the concurrence of the two Houses. This was articulated by Lord Brougham in his 1861 book *The British Constitution: Its History, Structure, and Working*. He said, at page 254:

It is, however, a more serious infringement of the fundamental principle if either of the three branches assumes, under any pretence, a power of acting without the concurrence of the other two, and without the sanction of any known general law to which the obedience of the people may be required.

Senator Boudreau needs to bone up on his knowledge of responsible government. Bill C-20 is such an act. It is not only Neanderthal, politically prehistoric, but it is dangerous. It is especially dangerous because it pretends to bring clarity, but it does not. Senator Boudreau told us, as have many government personnel, that the Government of Canada, the cabinet, by the Royal Prerogative, has the right or, rather, the power to negotiate anything it sees fit without the Senate or the House of Commons. Senator Boudreau said at page 813 of the *Debates of the Senate*:

At the present time, the executive, or cabinet, has the prerogative on whether to enter into negotiations concerning constitutional amendments, and though neither chamber has a direct role to play in that decision, our system of responsible government gives the House of Commons leverage that we in the Senate do not have.

First, Senator Boudreau is wrong. The executive, the cabinet, has no prerogative. The Crown does, Her Majesty does, but the cabinet has no prerogative. The prerogative is the Royal Prerogative. The government leader relies on the Royal Prerogative of Her Majesty. He relies on royal authority, regal authority, as against Parliament; that is, as against the interest of the subjects, the citizens.

Reliance on the prerogative by governments in responsible government has always been viewed as improper and is the antithesis of responsible government. About this impropriety, Lord Brougham also said, at page 331:

...it is an impure and illicit source from which to draw favour towards the Government. That favour will necessarily arise from the legitimate use of the power, and this is sufficient.

I repeat: the legitimate use of the power of the Royal Prerogative. Boasts of the government's use of Royal Prerogative against the interests of the subjects, the citizens, are unhealthy to good politics and are very hostile to responsible government, and also hostile to party politics. I also note that Senator Boudreau just simply asserted Royal Prerogative and will not tell us which of the Royal Prerogatives he is relying upon.

Honourable senators, I tell you that there is no such prerogative. There is no Royal Prerogative to negotiate the disunion of Canada. Her Majesty's sovereignty can tolerate no division.

On Senator Boudreau's mistaken explanation of responsible government in Canada and the role of the Senate, I shall quote a great Canadian authority, Alpheus Todd, on such oligarchical views. In his 1878 work *On the Position of a Constitutional Governor under Responsible Government*, Alpheus Todd wrote about such views, saying, at page 4:

That, in fact, the Cabinet of the day is an oligarchy, exercising an uncontrolled power in the administration of public affairs; subject only to the necessity of obtaining a majority in the popular branch of the legislature to approve their policy, and to justify their continuance in office. Such a form of Government, however theoretically defensible in the abstract, in the estimation of some political thinkers, is not that of the British Constitution.

Senator Boudreau's assertions in this chamber, and Minister Stéphane Dion's assertions, form no part of responsible cabinet government in the constitutional monarchy of Canada. Further, these assertions, like Bill C-20, form no part of Canadian constitutionalism, of Canadian constitutional law or practice. They form no part of parliamentary practice of the Parliament of Canada. I shall endeavour to show this.

Honourable senators, as I said, Senator Boudreau has relied on the Royal Prerogative, which he repeatedly describes wrongly as the government's prerogative. Senator Boudreau's language illustrates the government's problem and his own problem. I repeat, the prerogative is Her Majesty's prerogative. It is the Royal Prerogative, not the government's or the cabinet's.

On March 23, Senator Boudreau said at page 815 of the *Debates of the Senate*:

...in the absence of Bill C-20, the federal government would have the unfettered prerogative to determine whether there was a clear majority on a clear referendum question. It would be under absolutely no obligation to take into consideration the views of the Senate, though, as a practical matter, it would need to be sensitive to the views of the House of Commons because of the risk of a motion of non-confidence.

Senator Boudreau has told us that by the Royal Prerogative, he and the government are under absolutely no obligation to consider the views of Her Majesty's Senate on a matter of pressing public importance, being the existence of Canada, the very sovereignty of Canada as a nation. Further, he asks the Senate to concur.

Honourable senators, Senator Boudreau asserts that the government's unfettered prerogative creates an oligarchical situation wherein the government by this unfettered prerogative owes no obligation to the opinion or advice of the Senate but that, however, purely as a practical matter, the government must be sensitive to the views of the House of Commons because of the risk of a motion of non-confidence. Senator Boudreau does

not understand the system of governance in which he is operating, and the government seems to hope that most senators do not.

Honourable senators, I shall describe both the Parliament and the Senate of Canada's true constitutional position. By the British North America Act, 1867, sections 53 and 54, appropriation and tax measures must originate in the House of Commons by ministers of the Crown. Such measures, known as the financial initiatives of the Crown, must be accompanied by the Royal Recommendation, a form of the Royal Consent. If, perchance, by ministerial negligence or error an appropriation or tax measure not in conformity with sections 53 and 54 of the British North America Act were to pass in the House of Commons and was subsequently defeated in the Senate, that Senate defeat would be a defeat of the government and that defeat would be a question of confidence. I shall continue to show that the Senate, by its adverse vote, is constitutionally capable to defeat a government in respect of the government's exercise of the Royal Prerogative.

The two foremost constitutional and parliamentary minds among Canada's prime ministers had been Sir John A. Macdonald and Robert B. Bennett, later Viscount Bennett. I shall cite former prime minister R.B. Bennett during the 1933 debate on a railway bill, the result of a royal commission into railways and transportation in Canada that was Bill 37, respecting the Canadian National Railways and to provide for cooperation with the Canadian Pacific Railway System, and for other purposes. Of interest to all senators is that this bill was a government bill that originated in the Senate, introduced here by Senator Arthur Meighen. My focus is a clause of that bill which enacted the removal from office of the railway trustees by an address of the Senate and the House of Commons.

• (1910)

Clause 7 of that Bill had read:

No Trustee shall be removed from office, nor suffer any reduction in salary, during the term for which he is appointed, unless for assigned cause and on address of the Senate and House of Commons of Canada.

Prime Minister R. B. Bennett, that foremost authority on the Parliament and Constitution of Canada, described the role of the Senate in such an address. He told of the consequences to the government of an adverse vote, a negative vote, in the Senate of this address for removal. On May 4, 1933, about that Clause 7, in Committee of the Whole, Prime Minister Bennett said, a page 4585 of Hansard:

The House of Commons and the Senate, not simply the House of Commons, but both houses of parliament represent the shareholders....The approval of parliament must be given. If the approval of parliament is given the government is vindicated. If parliament refuses its approval the government will have to vacate its place.

Prime Minister Bennett told the Commons that the Senate defeat of such an address on motion of a minister of the Crown a defeat of the government, saying, at page 4586:



The reason why the Senate is introduced into this...is this: We want the board to be independent of the executive, just as no executive action should be capable of terminating the services of a judge. Therefore the appeal is made to parliament. In the case of the judges that is as old as the statute that provided it. It has come down through all these years, and parliament means both houses. The answer that at least one hon. gentleman would make if the commons alone were mentioned would be that the government of the day has always a majority in the commons and therefore is always sure of being sustained in that chamber. But the government has not always a majority in the other chamber, whether in this country or any other, and therefore the government of the day may not be sustained in the other house; it may not secure the joint approval of the two houses of parliament by which these men may be removed.

Mr. Bennett continued to uphold the important and pivotal role of the Senate as part of Parliament, the role of giving advice to the sovereign, saying, at page 4586:

The question must be submitted to the high court of parliament, and the government of the day having submitted its cause, not to this house alone but also to the other branch of parliament which may not conceivably support the government, and that has very often happened, if it is unable to secure the approval of that other branch of parliament, as well as the approval of the commons, it fails and the government must go.

Prime Minister Bennett was speaking about the Senate's ability to defeat the government on a resolution; the very same Senate which Senator Boudreau has said that the government need not consider its opinion. Prime Minister Bennett also said, at page 4587:

The government assumes the responsibility of asking the approval of parliament for the dismissal of Mr. A. the chairman of the board of trustees. The House of Commons says yes and the Senate says no. The government has failed.

Prime Minister Bennett concluded, at page 4587:

What is the good of this business of always talking high platitudes with respect to parliamentary institutions, when you have to deal with facts and realities? The reality is that if the House of Commons does not approve of the action of the government, that is the end of it; the government goes. And if you have said that the House of Commons plus the other house must approve, and it does not, the government goes equally. That applies with respect to the dismissal of the individual. That is not so about a statute at all. What is more, there are illustrations of it; it is not a new question at all. When a joint address is to be agreed upon, if one party does not agree to it, there is no joint address, and the government which initiates it must accept the responsibility

for it. That is the difference between that and a statute. A government's measure may be defeated in the Senate, and that is the end of it. But that is not this case. The government has risked its fate by dismissing a man from his job. It has risked its all on that dismissal, and it has made that dismissal subject to the joint approval of two branches of parliament.

Honourable senators, Prime Minister Bennett was firm about the proper constitutional role of the Senate in its advice. Prime Minister Bennett, in response to Mr. Euler, revealed a piece of political history about the Senate and Sir John A. Macdonald. The exchange was, at page 4587:

Mr. Euler: I cannot conceive that the life of the government, for any reason, can be dependent upon the action of the Senate of Canada. The Prime Minister laughs at that, as he so often does.

Mr. Bennett: The Senate put the Macdonald government out.

Honourable senators, the constitutional role of the Senate, as confirmed by Mr. Bennett, pertains to the removal of high officers, whose acts of Parliament contain similar statutory provisions as Mr. Bennett described. These offices include, but are not limited to, the Auditor General, the Information Commissioner, the Privacy Commissioner, and the Commissioner of Official Languages. This also pertains for all high officers holding office during good behaviour. That is the constitutional role of the Senate and the constitutional meaning of "during good behaviour."

Honourable senators, this same concept of joint address by both chambers, in removing persons of high office, was advanced by Lester B. Pearson during debate on the Diefenbaker-Coyne affair in 1961. During debate on then Minister of Finance Donald Fleming's Bill C-114, respecting the Bank of Canada, a one-line bill to remove the Bank of Canada Governor James Coyne, Lester B. Pearson, the then Leader of the Opposition, stated that the proper procedure was not by that bill, but by a joint address of the Senate and House of Commons. On June 26, 1961, Mr. Pearson told the Commons, at page 7056:

That action, I suggest, should not take the form of this kind of bill. That action, I suggest, would require two stages. First an amendment to the Bank of Canada Act, an amendment which we were told by the Minister of Justice —

— who was Mr. Fulton —

— not long ago would be required in this situation, to provide a procedure for removing the governor similar to that contained in the Judges Act, so we could not have this kind of situation in the future. Then a joint address of both houses with the full particulars which justify the removal of the governor.

Honourable senators, obviously a Senate defeat of the bill would not be a defeat of the government, but most certainly a defeat of an address moved by a minister of the Crown would have, because, as Prime Minister R.B. Bennett said, the fate of the government for removing Bank of Canada Governor Coyne would have been determined by the vote of the Senate. It is clear why Diefenbaker's Conservative government proceeded by bill rather than by address. That bill was defeated in the Senate by Liberals. Had it been an address moved by Minister Fleming, that would have been the defeat of the government. It is obvious why Minister Fleming and Mr. Diefenbaker proceeded by bill and not by address.

Honourable senators, the Senate's role in joint addresses in respect of the Royal Prerogative in appointments and commissions of high officials is undisputed, and I always thought well known. The defeat of the government exercise of the Royal Prerogative of the Fountain of Justice is well known and beyond dispute. The British North America Act, 1867, section 99.(1), states that judges may be removed by address of the two Houses. Section 99.(1) states:

Subject to subsection two of this section, the Judges of the Superior Courts shall hold office during good behaviour, but shall be removable by the Governor General on Address of the Senate and House of Commons.

Honourable senators, such an address, moved by the Attorney General of Canada, adopted in the House of Commons but failed in the Senate, would be a defeat of the government. For that reason, on June 6, 1967 a notice of motion to remove Supreme Court of Ontario Justice Leo Landreville was introduced in the Senate by a non-minister, Senator Dan Lang, and not in the House of Commons by the then minister of justice, Pierre Elliott Trudeau. This was to avoid the consequences, even possibility, of a failed motion by the Minister of Justice as law officer of Her Majesty in right of Canada. The consequence of such a failed motion would have been the defeat of the government on a question of confidence. The government knew that, and hoped to pressure Mr. Justice Landreville into resigning by proceeding as it did. The government, in that knowledge, asked Senator Lang to proceed in the chamber.

Honourable senators, in conclusion, the Senate's role in addresses and its ability to defeat a government is evident in addresses of the two houses regarding the Throne Speech. It is evident that an adverse amendment or adverse Senate vote on the Address in Reply to the Throne Speech would defeat the government. Honourable senators, if such an address were carried in the Commons and defeated in the Senate, the result would be a defeated government.

Honourable senators, I have been talking about the Senate's role in joint addresses and resolutions, not bills, of both Houses. Addresses are a mode of speaking to the sovereign, of giving advice and opinion to Her Majesty. Senator Boudreau spoke of confidence solely as a matter for members of the Commons in approving or condemning the actions of ministers. I have been speaking of Parliament's, particularly the Senate's, power to advise the Crown, praying or requesting the Crown to take or not to take a particular action, which is done by resolution for address, the very power that Bill C-20 seeks to overcome.

• (1920)

Sir Erskine May defines an "address," saying, at page 606, Twenty-second Edition:

An Address to Her Majesty is the form ordinarily employed by both Houses of Parliament for making their desires and opinions known to the Crown ...

The address is the mode by which the Houses of Parliament speak to the sovereign. Erskine May informs that the subjects upon which addresses are presented are too varied to admit of enumeration, stating, at page 607:

Addresses have comprised every matter of foreign or domestic policy; the administration of justice; ... and in short, representations upon all points connected with the government and welfare of the country; but they ought not to be presented in relation to any bill in either House of Parliament.

There is no limit to the advice to the sovereign that may be rendered by an affirmative vote of the Senate. Undoubtedly, the Parliament of Canada, and its constituent part, the Senate, possesses this power. This power is known as the power to advise; it is well documented. Liberal Edward Blake, on April 30, 1890 in the House of Commons spoke about this power of Parliament to express its opinion by address requesting Her Excellency or Majesty to exercise power. Mr. Blake said, as reported at page 4211 of the *Debates of the House of Commons*:

The Parliament of the country has a power not merely to approve and to condemn, but it has also a more important power with reference to every political and executive act — it has a power to advise.... The power of advice is the great power of Parliament ...

Honourable senators, the great power of Parliament, the great power of the Senate, is the power to advise. The power of the Senate to advise is unlimited. However, Bill C-20 seeks to limit it, to abridge it, actually to abolish the power of the Senate to pass resolutions, motions, and addresses, to limit the Senate's great power to advise. Senator Boudreau is wrong about the Senate's constitutional role in responsible government to defeat the government, as a question of confidence. He is also wrong on the Senate's power to advise on national unity. The British North America Act, 1867, section 18, conferred that power on the Senate. Further, the Supreme Court of Canada in its 198 patriation reference, as condemned by Mr. Trudeau, as mentioned earlier, which turned on Parliament's power to advise and pass resolutions, upheld that. It stated, at section VIII, page 29, *Dominion Law Reports*:

Turning now to the authority or power of the two federal Houses to proceed by Resolution ... There is no limit anywhere in law, either in Canada or in the United Kingdom (having regard to s. 18 of the *British North America Act, 1867*, as enacted by 1875 (U.K.), c.38, s.1, which ties the privileges, immunities and powers of the federal Houses to those of the British House of Commons) to the power of the Houses to pass resolutions.



Honourable senators, Bill C-20 is improper and inappropriate. Constitutional governance demands executive accountability to legally known processes. I invite Senator Boudreau to reconsider his position on this matter and his invitation to senators to agree with him.

Honourable senators, the Supreme Court has said, and Bill C-20 is saying, that there is no power in the law to allow a unilateral decision on secession. Therefore, they are saying that, "since the Constitution was silent on that, we are passing an act," supposedly in obedience to a loosey-goosey, as Professor Peter Hogg says, advisory opinion of the court, "to create a situation where, because there is no authority for a unilateral decision, we are creating an authority to allow secession of Canada by a bilateral agreement."

Honourable senators, for me, that is objectionable — extremely objectionable. As far as I am concerned, matters of that enormity, and matters that pertain like that to the national sovereignty of this land, are matters that are properly owned and which should be properly canvassed and properly superintended by the Senate, by the Parliament of Canada.

Canada is not to be divided by a simple negotiation bilaterally by the premier of Quebec and the Prime Minister of Canada.

On motion of Senator DeWare, for Senator Andreychuk, debate adjourned.

### PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

#### SECOND READING—DEBATE ADJOURNED

**Hon. Richard H. Kroft** moved the second reading of Bill C-22, to facilitate combating the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

He said: Honourable senators, it is my privilege to speak to you today at second reading of Bill C-22, the proceeds of crime, or money laundering, bill.

Money laundering is the process whereby the proceeds from criminal activities are converted into assets that cannot easily be traced back to their illegal origins. The process typically begins with the placement of cash into financial channels. It may also involve a series of complex financial transactions in which the dirty money is layered to further disguise its origins and then integrated or invested in seemingly *bona fide* assets.

Open borders and globalized financial markets provide today's criminals with the opportunity to launder millions of dollars every day in illegal profits. No country, including Canada, is immune from these activities.

Given the clandestine nature of money laundering and of the crimes that generate the funds that need to be laundered, it is difficult to put a precise figure on the size of the problem. However, studies have estimated that between \$5 billion and

\$17 billion in criminal proceeds are laundered in and through Canada each year. These sums, which are very large by any standard, are linked primarily to proceeds from drug trafficking.

What has Canada been doing to address this problem? In 1989, the government took important steps to address money laundering through amendments to the Criminal Code, the Food and Drugs Act, and the Narcotics Act. Thus, the building blocks of anti-money laundering have been put in place for some time. That legislation made money laundering a criminal offence and established procedures for seizing, restraining and forfeiting proceeds of crime.

The current Proceeds of Crime (money laundering) Act came into force in June 1991. It provides Canada with its current system of record keeping and client identification for financial transactions conducted through financial institutions, as well as professionals that act as financial intermediaries.

In addition, certain deposit-taking institutions entered into cooperative arrangements with the RCMP in 1993 to provide for the voluntary reporting of suspected money laundering activities to the police.

Further, in partnership with the provinces, territories and law enforcement agencies, the federal government has taken several steps against organized crime, including initiatives to fight smuggling and seize proceeds of crime.

In spite of having taken these actions, it is clear that Canada now needs to do more.

• (1930)

As money laundering techniques become more sophisticated, detection and deterrence have become increasingly difficult. Traditional methods used by law enforcement, such as storefront sting operations, have generally only been effective in dealing with money launderers who use smaller money service businesses, such as street level foreign exchange houses. At the same time, the current anti-money laundering measures of record keeping and limited voluntary reporting by deposit-taking institutions tends to focus only on the initial placement of cash into financial channels.

The effectiveness of the current reporting scheme is limited by its voluntary nature and by the fact that illicit funds can enter the system other than through deposit-taking institutions. This is borne out by international anti-money laundering organizations. They have noted the tendency for illicit funds to enter the financial system through such diverse points as insurance companies, security dealers, casinos, currency exchange businesses and professionals, including lawyers and accountants.

The call for stronger legislation in Canada has come from various sources. Law enforcement agencies in Canada and abroad need help to deal with the new realities of international organized crime. They have made the case to the federal government for legislation that requires the reporting of suspicious and prescribed transactions such as large cash transactions above a certain amount and of cross-border movements of currency.

At the international level, Canada has come under increasing scrutiny though for gaps in our anti-money laundering arrangements. A 1997 review by the Financial Action Task Force on Money Laundering found Canada's arrangements to be lacking in certain key areas. The FATF strongly encouraged Canada to meet international standards that required the mandatory reporting of suspicious transactions.

In recent years, the other 25 members of the task force have made great strides in strengthening their anti-money laundering laws. Except for Canada, all other FATF members currently have suspicious transaction reporting requirements in place similar to those contained in this bill. The measures taken in these other countries have facilitated international cooperation among them, in fighting money laundering.

Honourable senators, the bill we are debating today is the government's response to the need for stronger legislation. It updates and strengthens the existing act and will improve the detection, prevention and deterrence of money laundering in Canada. I must emphasize, however, that this legislation was designed with the goals of giving law enforcement agencies the tools they need while at the same time protecting individual privacy. This bill meets both goals.

I should also point out that the bill was developed in consultation with many other stakeholders, including the provinces and territories, the financial community, consumer groups and organizations concerned about privacy issues.

Honourable senators, I should now like to discuss briefly the measures in the bill. Bill C-22 continues the record keeping and client identification features of the existing Proceeds of Crime Act. In addition, it provides for the mandatory reporting of suspicious transactions and prescribed transactions, the reporting of large cross-border movements of currency and the establishment of the new Financial Transactions and Reform Analysis Centre.

I should like to take a moment to describe these new measures because each is important in its own right. Taken together, they constitute a coherent package that will strengthen Canada's anti-money laundering capabilities. These measures will also bring Canada into line with accepted international standards in the fight against money laundering.

I shall begin by discussing the mandatory reporting provisions of suspicious transactions. One of the cornerstones of anti-money laundering systems around the world is the legal obligation to report transactions where money laundering is suspected. By implementing this measure, Canada now joins the other member countries of the Financial Action Task Force on Money Laundering that already have some form of mandatory, suspicious transaction reporting in place.

Regulated financial institutions, casinos, currency exchange businesses and certain other financial intermediaries, such as lawyers and accountants who act in this capacity, will now be required to report any financial transaction in respect of which there are reasonable grounds to suspect that it is related to the

commission of a money laundering offence. In addition, specific types of transactions, like the receipt of cash above a prescribed amount, such as \$10,000, and large electronic transfers, will be outlined in regulations and must also be reported.

Honourable senators, Bill C-22 also requires that the movement of large amounts of cash money or monetary instruments like travellers' cheques across the Canadian border be declared to Canada Customs. This measure complements the other reporting requirements of the bill by discouraging a shift in money laundering activity across the border.

If individuals or businesses fail to comply, a customs officer can seize the currency. However, any cash or monetary instruments that are seized will be returned once the fine has been paid unless Customs has reasonable grounds to suspect that the money represents proceeds of crime, in which case the money may be forfeited to Her Majesty. Naturally, there will be mechanisms in place for the review and appeal of cross-border seizures and penalties.

The third major element of Bill C-22 involves the establishment of the new Financial Transactions and Reports Analysis Centre of Canada which will be tasked with receiving and analysing all of the reports mandated by this bill and determining whether limited information should be passed on to the relevant authorities. The centre does not have investigative powers.

Honourable senators, it is important to emphasize that there will be safeguards in place to ensure that the collection, use and disclosure of information by the centre will be strictly controlled. The centre will be an independent body acting at arm's length from law enforcement agencies and other agencies entitled to receive information from the centre.

In addition, where the centre has reasonable grounds to suspect that information would be relevant to the investigation or prosecution of a money-laundering offence, the centre will only pass on a specified limited amount of information to the police and other designated agencies.

The information that the centre can disclose will be limited to key identifying information relating to reported transactions such as the name of the client, the numbering of the account involved, the amount of the transaction and other similar information.

Given the limited nature of this information, law enforcement authorities will be required to build a case for prosecution purposes and obtain a court order for disclosure to obtain further information from the centre. The centre will not be subject to subpoenas except in respect to money-laundering investigation and prosecutions. I should note, too, that these safeguards are backed by criminal penalties for any unauthorized use or disclosure of personal information under the centre's control.

Further, the centre will be subject to the Privacy Act and its protections. In addition, each House of Parliament will receive an annual report on the operations of the centre. There will also be parliamentary review following five years of the committee operation.



Honourable senators, it is clear from this description and certainly from a close reading of Bill C-22 that careful consideration has been given to ensuring that this legislation will create a balanced and effective anti-money laundering scheme while protecting individual privacy.

Before closing, I wish to touch on the bill's regulation-making authority concerning the coverage of entities, client information, record keeping and reporting requirements. This authority will provide much needed flexibility to respond quickly to the ever-changing nature of money laundering and to adapt the regime to changes in the way financial intermediaries conduct their business.

This bill also allows greater flexibility to respond to issues raised by stakeholders in complying with the legislation. Extensive consultations have already started on regulations and these will continue in the next few months to further refine the current proposals and develop additional ones regarding the form and manner of reporting. The government's aim is to develop regulations that are consistent with the principles underlying the bill. This means striking an appropriate balance among the objectives of law enforcement, protection of personal information, minimum compliance cost and support for Canada's contribution to international efforts to combat money laundering.

This bill requires a 90-day pre-publication period for regulations and a 30-day notice period for further changes. These requirements go well beyond what is provided in many federal statutes and reflects the importance the government attaches to public consultations in this area.

I have noted institutions and professions covered by this legislation will be required to report suspicious transactions to a new anti-money laundering agency. The government recognizes that guidance will be needed in determining whether there are reasonable grounds to suspect that a particular transaction is related to the commission of a money-laundering offence.

This guidance will be in the form of official guidelines issued by the new agency. This is the approach that is being taken in many other member countries of the Financial Action Task Force, including Australia, the United Kingdom and the United States. The proposed guidelines will be developed in full consultation with stakeholder groups and will reflect the circumstances of the businesses and professions that have a reporting obligation under the bill.

● (1940)

Anti-money laundering guidelines already exist that can serve as models for this purpose. For example, the Superintendent of Financial Institutions issued his guidelines for deterring and detecting money laundering in 1996. In addition, the guidelines and experience of other countries that require suspicious transactions to be reported can be drawn upon in the development of appropriate guidelines for our legislation.

Honourable senators, Bill C-22 is specifically aimed at helping to defeat the vicious cycle of crime by going after criminals where it hurts most — in their wallets. This legislation achieves several things. First, it targets the financial rewards of criminal

activity and protects the integrity of our financial system in Canada. Second, it creates a balanced and effective reporting scheme to uncover criminal activity while protecting individual privacy. Third, it complements other federal initiatives against organized crime by helping Canada to meet its international commitments in this area.

It is essential, as we all know, that Canada fulfils its responsibilities, both as a founding member of the Financial Action Task Force on Money Laundering and as a member of the G-8, to cooperate in the international fight against money laundering. Bill C-22 ensures that Canada meets these responsibilities. I urge all senators to move this bill forward to committee and to final stage without undue delay. It is a matter of serious importance to Canadians and to our international obligations.

On motion of Senator Kinsella, for Senator Kelleher, debate adjourned.

[Translation]

## FEDERAL LAW—CIVIL LAW HARMONIZATION BILL

### SECOND READING—DEBATE ADJOURNED

**Hon. Pierre De Bané** moved the second reading of Bill S-22, to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and civil law.

He said: Honourable senators, I shall begin by giving you a brief overview of the legal and political context into which harmonization fits. I shall then go on to specifically address the content of the various parts of Bill S-22, in some cases the letter, in some cases the spirit of the law. In so doing, I shall be setting out the key issues of legislative policy raised by this initiative. I shall conclude with the beneficial effects of the harmonization process.

[English]

This bill is the first fruit of a long process, the roots of which lie in the Policy for Applying the Civil Code of Quebec to Federal Government Activities of 1993 and the Policy on Legislative Bijuralism of 1995. In addition, it forms part of a series of actions designed to implement the commitments made in the resolutions on the distinct character of Quebec society adopted by both Houses of Parliament in December 1995. Those resolutions recognized that Quebec is distinct because, among other things, of a civil law tradition.

[Translation]

The government committed to harmonization as the new Quebec Civil Code was about to come into effect on January 1, 1994. This blanket reform of Quebec civil law forced changes to the federal legislative texts applicable to Quebec with regard to concepts of private law falling under provincial jurisdiction.

The harmonization process undertaken since then has involved far more than merely updating federal texts. This initiative makes it possible for a broader task to be accomplished: putting the Canadian bijural reality into material form by formally recognizing the coexistence of the traditions of common law and of civil law, as far as provincial private law is concerned.

In order to meet this challenge, the Department of Justice created a Civil Code Section to administer the program, launched by the Government of Canada, for harmonization of federal legislation with Quebec civil law. The object of this program is to ensure that the language of each version of a federal law or regulation reflects the traditions of civil law and of common law. The section has instituted an in-depth analysis of the provisions of some of the 700 federal statutes with a view to harmonization.

[English]

Pilot studies were conducted to provide a concrete indication of the nature, variety and breadth of the problems caused by the interaction between federal law and civil law. The areas requiring more meaningful reform were noted. It was also necessary to determine the most suitable methodology for this harmonization, as well as to decide on the most appropriate legislative drafting techniques.

Bill S-22 is part of this process, as its preamble indicates. Besides introducing the legislative content of this bill, the preamble describes the most important characteristics of the program to harmonize federal law with the civil law and establishes its political and legal objectives.

[Translation]

The first part of this bill contains provisions intended to facilitate the harmonization program. As to the residual provisions of the Civil Code of Lower Canada of 1866, which comes under the jurisdiction of Parliament, the analysis of the various legislative options, such as the *status quo*, the adoption of equivalent federal standards and the repeal of the provisions individually, led to the conclusion that it would be appropriate to repeal all of these provisions indiscriminately. This solution has the advantage of properly meeting the objective intended by the act of harmonization since the identification of the pre-Confederation provisions that are clearly and distinctly under federal jurisdiction is difficult.

With the intent of avoiding legal uncertainty in the Province of Quebec, new provisions governing the underlying conditions are proposed in the matter of marriage. It should be noted that these new provisions harmonize perfectly with the Civil Code of Quebec and respect for the values of contemporary society. One of these replacement provisions confirms for Quebec that marriage is a heterosexual institution. This was in fact the aim of a resolution by the House of Commons in June 1999 and is currently acknowledged in Bill C-23.

In the subsequent parts, the bill amends existing federal legislation.

[English]

Bill S-22 adds two provisions to the Interpretation Act. The first recognizes the reality of Canadian bijuralism in relation to property and civil rights and the fact that federal law and provincial law complement each other. The second sets out rules to facilitate the interpretation of federal statutes and regulations using common law and civil law terminology in the context of Canadian bijuralism. These rules will also assist in understanding the drafting techniques used to render federal legislation bijural.

Bijuralism is a fact of life in Canada. Stating this principle expressly in legislation that has national application has an important symbolic value. The seriousness of Canadian bijuralism results from the fact that federal law and provincial law complement each other in relation to property and civil rights. Therefore, the Interpretation Act was the appropriate statute in which to state this principle, whose origin can be traced directly back to the foundation that underpins our federal system, namely, the constitutional division of legislative powers.

• (1950)

[Translation]

The bill also amends three laws: the Federal Real Property Act, the Bankruptcy and Insolvency Act and the Crown Liability and Proceedings Act. It also amends 45 statutes in the areas of property, securities and civil liability.

[English]

Let me elaborate on these changes of the Bankruptcy and Insolvency Act. This act poses a special challenge in the harmonization initiative, given the unique features of relation between debtors and creditors. Parliament defines the rights of creditors having a claim by referring to the concept and institutions of provincial private law. A good example of this can be seen in the definition of a "secured creditor."

In order to ensure that this act continues to be applied uniformly throughout Canada, and to restore to certain creditor the status they enjoyed prior to the coming into force of the Civil Code of Quebec, it was necessary to amend the definition of "secured creditor" to introduce the new notion of prior claim. In the same vein, the new rules found in the Civil Code of Quebec involving the giving of property as security, have been included in the definition of "secured creditor."

[Translation]

In addition, other amendments to this law were necessary to respect the civil law community and to better enshrine Canadian bijuralism. In order to prevent the introduction in civil law of common law concepts alien to it, the law was amended to recognize that the courts in Quebec considering matters of bankruptcy and insolvency lack jurisdiction at law and in equity which is unique to common law.



All of the amendments proposed bear witness to a concern for all legal communities in Canada, whether they use English or French, the Civil Code or common law. By so doing, the drafting of bijural laws and regulations, which will thus be more understandable to all Canadians, is an important aspect of the modernization of federal prescriptive texts. Like Quebec's Civil Code, which ensures greater relevance of the law to the current realities of Quebec by updating the rules of civil law in a language appropriate to the 21st century, the harmonization of federal laws and regulations compensates for the obsolescence of federal law and ensures that it more properly meets the needs of Canadian society.

[English]

The initiative will also have a beneficial, albeit indirect, impact on a national scale. As I noted earlier, the formal recognition of bijuralism in both language versions of the statutes will promote the development of a legal vocabulary that is easily understood by the minority language communities, namely, the vocabulary of the common law in French and the vocabulary of civil law in English. In addition, clarifying the intent of Parliament regarding the suppletive law applicable to federal enactments will ensure better interaction with the private law of the other provinces, in particular, when the common law applicable in these provinces is amended by provincial legislation, the substance and scope of which differ from province to province. Canadian bijuralism will also enable us to derive benefits from each of the two legal systems. The presence in Canadian legislation of elements taken from both systems will enrich federal law, since it will be possible to improve the law in Canada by comparing and including rules from both systems of law.

Finally, the harmonization bill, following upon the 1995 resolutions of both Houses of Parliament, is respectful of the differences existing within the country.

[Translation]

Finally, the initiative will be advantageous to Canada internationally. Canada's bijural nature leads to respect for two of the great contemporary legal traditions: the civil and the common law systems.

As we enter a new millennium, the globalization of markets and Canada's ever-growing openness to various countries continue to have an impact on citizens. In this context, Canadian bijuralism makes possible a better understanding of the laws of countries belonging to one or the other of these systems — close to 80 per cent of the countries in the world.

It gives Canada an edge when international rules containing concepts from one or the other of these systems are drawn up, and makes it easier to adapt these rules.

In addition, other bijural countries will be able to follow Canada's lead, which is without equal or precedent. The programme to harmonize federal law with the civil law of Quebec is therefore singularly important for the Canadian and international legal community. Canadian bijuralism is a promising system at the dawn of a millennium characterized by

innovation, and is a unique characteristic which Canada ought to be proud to possess. If memory serves, it was Justice Bastarache of the Supreme Court who spoke about the way in which these two legal systems can mutually enrich one another.

With respect for these goals, particularly the harmony which ought to characterize our modern and bijural legal system, I urge all honourable senators to support Bill S-22.

On motion of Senator De Ware, in the name of Senator Beaudoin, debate adjourned.

[English]

# **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

NOTICE OF MOTION FOR ALLOTMENT OF TIME  
FOR DEBATE WITHDRAWN

On Motion No. 2:

That, pursuant to Rule 39, not more than a further six hours of debate be allocated to dispose of the following motion:

That a special committee of the Senate be appointed to consider, after second reading, the Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference:

That, notwithstanding Rule 85 (1)(b), the committee be comprised of fifteen members, including:

Senator Joan Fraser  
Senator Céline Hervieux-Payette, P.C.  
Senator Colin Kenny  
Senator Marie P. Poulin (Charette)  
Senator George Furey  
Senator Richard Kroft  
Senator Thelma Chalifoux  
Senator Lorna Milne  
Senator Aurélien Gill;

That four members constitute a quorum;

That the committee have power to send for persons, papers and records, to examine witnesses, and to print such papers and evidence from day to day as may be ordered by the committee;

That the committee be authorized to permit coverage by electronic media of its public proceedings with the least possible disruption of its hearings; and

That the committee have power to retain the services of professional, clerical, stenographic and such other staff as deemed advisable by the committee.

That when the debate comes to an end or when the time provided for the debate has expired, the Speaker shall interrupt, if required, any proceedings then before the Senate and put forthwith and successively every question necessary to dispose of the motion; and

That any recorded vote or votes on the said question be taken in accordance with the provisions of Rule 39(4).

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, Item No. 1 under the heading "Motions" is a notice of motion concerning time allocation that I gave with respect to striking the committee to receive Bill C-20. I have not moved this motion and I ask at this time that it be withdrawn from the Order Paper.

**The Hon. the Speaker:** This is Item No. 2, is it not?

**Senator Hays:** Honourable senators, it is not clear to me whether it is Item No. 1 or Item No. 2, but for purposes of certainty, it is the motion of which I gave notice of time allocation with respect to the creation of the special committee to receive Bill C-20. I am confused as to the number, but I should like it to be withdrawn.

**The Hon. the Speaker:** It is withdrawn. It has not been moved, so no further action is required.

Motion withdrawn.

[Translation]

• (2000)

## MARINE LIABILITY BILL

### REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the fourth report of the Standing Senate Committee on Transport and Communications (Bill S-17, respecting marine liability and to validate certain by-laws and regulations, with amendments presented in the Senate on May 9, 2000.

**Hon. Lise Bacon:** Honourable senators, I move that the report be adopted.

Honourable senators, I wish to begin by thanking the senators on the Transport and Communications Committee who have, once again, worked seriously and diligently. I wish to draw particular attention to the quality of the work done by Senator Furey, who sponsored the bill.

The witnesses at our hearings made it possible for the committee members to see just how unanimous the support of the Canadian shipping industry was on Bill S-17, respecting marine liability.

The government's intention with Bill S-17 is to equip Canada with a modern and complete regime of marine liability. The bill will consolidate existing marine liability regimes. It will also make it possible to adopt a new regime concerning shipowners' liability to passengers and apportionment of liability.

The various stakeholders in the shipping industry support this rationalization of legislation on marine liability. In its brief to the committee, the Canadian Maritime Law Association expressed its pleasure in learning that soon there will be but one law, encompassing regimes relating to the carriage of both goods and passengers by water, the limitation of liability for maritime claims and conventions on oil pollution.

Most observers agree that Part IV constitutes the core of Bill S-17. Part IV establishes a new regime of shipowners' liability to passengers in order to ensure that, in the event of losses, particularly important ones, claimants will be entitled to a simplified compensation regime. The new regime is consistent with the 1974 Athens Convention, as amended in 1990, which establishes a uniform liability regime for the carriage of passengers by sea. Similar regimes are already in force in many countries. In addition, the bill will render inoperative the clauses sometimes found on passengers' tickets exempting carriers from civil liability.

As we have already mentioned, the shipping industry is in favour of the bill. However, when representatives of the Canadian Maritime Law Association appeared before the committee, they proposed a slight amendment to paragraph (b) of clause 37(2). According to the association, the original wording of the paragraph could have the undesirable effect of extending the application of the Athens Convention to the carriage of any passenger by water under a contract or otherwise.

In other words, according to the association, the original wording of the bill could have the unintended effect of also including passengers on pleasure craft.

The Minister of Transport responded quickly to the concern expressed by the Canadian Maritime Law Association and proposed two amendments clarifying the scope of the bill. The purpose of the amendments is to restrict the application of the Athens Convention to passengers on commercial ships. The intention was not to apply this convention to passengers on pleasure craft. The committee feels that the proposed amendments are a satisfactory response to the concerns raised by the Canadian Maritime Law Association.

**The Hon. the Speaker:** Honourable senators, if no other senator wishes to speak, it is moved by Senator Bacon, seconded by Senator Wiebe, that this report be now adopted.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and report adopted.



[English]

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, bill placed on the Orders of the Day for third reading at the next sitting of the Senate.

# **BILL TO CHANGE NAME OF ELECTORAL DISTRICT OF RIMOUSKI—MITIS**

SECOND READING—DEBATE ADJOURNED

**Hon. Bill Rompkey** moved the second reading of Bill C-445, to change the name of the electoral district of Rimouski—Mitis.—(*Honourable Senator Rompkey, P.C.*).

He said: Honourable senators, this is “one of those bills” that we get from time to time. We know not whence they come nor whence they go. They disappear into the great maw of Parliament. It is my duty today to move it.

Some honourable senators will want to make representations on this bill. We had referred a previous similar bill to the Standing Senate Committee on Legal and Constitutional Affairs. That bill was standing in the name of Senator Nolin.

Some honourable senators have concerns. I, myself, have some concerns about the process here. I would suggest that we hold those discussions, pro and con, in committee.

On motion of Senator Kinsella, debate adjourned.

## **BUSINESS OF THE SENATE**

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I move that we let stand all remaining matters on the Order Paper and Notice Paper that have not yet been addressed remain and that we revert to Government Notices of Motion.

**The Hon. the Speaker:** Honourable senators, is leave granted to stand all other items in the same order as they are presently listed on the Order Paper?

**Hon. Senators:** Agreed.

## **PRIVACY COMMISSIONER**

NOTICE OF MOTION TO RECEIVE  
IN COMMITTEE OF THE WHOLE

Leave having been given to revert to Government Notices of Motion:

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I give notice that tomorrow, Wednesday, May 17, 2000, I shall move:

That the Senate do resolve itself into Committee of the Whole at 4:30 p.m. on Tuesday, May 30, 2000, in order to receive the Privacy Commissioner, Mr. Bruce Phillips, for the purpose of discussing the work of his office.

## **ADJOURNMENT**

Leave having been given to revert to Government Notices of Motions:

**Hon. Dan Hays (Deputy Leader of the Government),** with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 17, 2000, at 1:30 p.m.;

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to adjourn the Senate;

That should a division be deferred until 5:30 p.m. tomorrow, the Speaker shall interrupt the proceedings at 3:30 p.m. to suspend the sitting until 5:30 p.m. for the taking of the deferred division; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Motion agreed to.

The Senate adjourned until Wednesday, May 17, 2000, at 1:30 p.m.

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OFFICIAL REPORT  
(HANSARD)

Wednesday, May 17, 2000



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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER

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## THE SENATE

Wednesday, May 17, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### CANADIAN BROADCASTING CORPORATION

##### PRINCE EDWARD ISLAND—EFFECT OF PROPOSED CUTS

**Hon. Catherine S. Callbeck:** Honourable senators, I should like to draw the attention of the chamber to the recent newspaper reports that the CBC is planning on abandoning its regional supper-hour newscasts in favour of a regional insert to be produced in either Toronto or Halifax. If this proposal goes through, many small regions across the country will be hit hard. My province of Prince Edward Island will lose the local *Compass* supper-hour broadcast, and 30 of the current 36 employees will be laid off.

The people of Prince Edward Island and others throughout Canada depend on their local programming to keep them informed about what is happening at their local level. In fact, the CBC news program *Compass* is the only local television news program in Prince Edward Island, so it is vital to the people of the province.

Subsection 3(1) of the 1991 Broadcasting Act is very clear in that it states that the CBC must reflect Canada and its regions and, further, that it must serve the special needs of those regions.

Honourable senators, how can the CBC fulfil the above commitment if it eliminates production of the only local television news program in my province? The creation of a national supper-hour news program in Toronto or Halifax will mean that Islanders and residents of other smaller regions will begin to hear less and less of their own stories and voices.

Honourable senators, local CBC programming is central to our national identity. I am strongly opposed to this proposal. Furthermore, I will be following this issue very closely and I urge all honourable senators to do the same.

#### COUNCIL OF ATLANTIC PREMIERS

##### MONCTON, NEW BRUNSWICK—SIGNING OF ORGANIZATIONAL MEMORANDUM OF UNDERSTANDING

**Hon. Brenda M. Robertson:** Honourable senators, on Monday of this week, I attended the ceremony in

Moncton marking the establishment of the Council of Atlantic Premiers. The formation of the Council of Atlantic Premiers formalizes a working relationship that has been ongoing for some time. Atlantic premiers have held conferences where they discussed matters of common interest, but, until Monday, no formal body existed.

Honourable senators, the work of the Council of Atlantic Premiers will be in addition to the work of the Council of Maritime Premiers, which has been in existence for more than 25 years. As Maritimers know, the Council of Maritime Premiers was the first agency of its kind in Canada, which brought together provinces to identify and act on opportunities through joint action, and this mandate will continue.

The memorandum of understanding signed by the region's four premiers is indeed good news for Atlantic Canadians. It strengthens the relationship between the Atlantic provinces, and it means that the region should have more clout in setting the national agenda.

The purpose of the council is to promote Atlantic Canadian interests on national issues. The council will accomplish this by developing a common set of priorities, or an Atlantic Canadian agenda, through working with residents of the region to advocate joint positions to ensure that the interests of the Atlantic region are well represented in national debates. We look forward to the continued work of this important alliance.

[Translation]

#### PRIME MINISTER'S VISIT TO MIDDLE EAST AND PERSIAN GULF

**Hon. Pierre De Bané:** Honourable senators, last Tuesday I had the opportunity to report to the Senate on the Prime Minister's visit to the Middle East. This was the longest visit ever made by a Canadian prime minister to that part of the world in the interests of peace. At that time, I referred to what a great success the visit had been in all of the countries we visited.

Since then, I am very pleased to report to the Senate that the diplomatic corps of all the Arab-speaking countries has met with senior Foreign Affairs officials in Ottawa. It has also expressed its immense satisfaction.

With the permission of the Senate, I should like to read a letter sent to me by the dean of Arab diplomats, Dr. Assem Jaber of Lebanon, concerning their meeting with department officials.



[English]

• (1340)

May 15, 2000

Honourable Senator Pierre De Bané,  
The Senate  
Ottawa, Ontario

My dear Senator,

Please accept my congratulations on the article you coauthored with Professor John Sigler about the recent visit to the Middle East by the Right Honourable Jean Chrétien, Prime Minister of Canada.

Your article gave a considered and balanced view of this successful trip which, as you know, was contrary to how it was unfortunately portrayed by the Canadian media and some members of the Canadian Parliament.

In a recent de-briefing meeting regarding the trip, organized for the Arab Group by Mr. John McNee, Director General of Middle East and North Africa Bureau at the Department of Foreign Affairs, the Heads of Missions of those Arab countries visited by Prime Minister expressed their deep satisfaction at the success of the trip.

The warmth displayed by the various Heads of State and governments and other officials toward Mr. Chrétien, which I witnessed during his visit to Lebanon, demonstrated their deep respect to Mr. Chrétien, as well as the great admiration and sincere friendship that the people of the region hold for Canada and Canadians.

I am confident that this visit has laid the foundation for even stronger bonds of cooperation and understanding between Canada and the countries of the region.

Please accept Senator, the continued assurance of my highest consideration.

Sincerely yours,

Dr. Assem Jaber  
Ambassador of Lebanon.

He is the dean of the Arab diplomats, heads of missions, posted in Ottawa.

With the permission of the honourable senators, I should like to table this letter from Dr. Jaber.

**The Hon. the Speaker:** Is it agreed, honourable senators, that this letter be tabled?

**Hon. Senators:** Agreed.

## CANADIAN BROADCASTING CORPORATION

### NEW BRUNSWICK—EFFECT OF PROPOSED CUTS

**Hon. Erminie J. Cohen:** Honourable senators, I agree with my honourable colleague Senator Callbeck and echo her concerns. New Brunswick citizens and politicians are determined to fight a proposed plan by CBC to eliminate *NB-NOW*, the only supper-hour news show produced in the province.

The public broadcaster's plan, which was reported in national newspapers, proposes deep cuts across the country. The plan is to cut 674 jobs as the CBC replaces the 14 existing regional supper-hour newscasts with one single national supper-hour news show fed by five regional inserts produced from Toronto.

This past Monday morning in Saint John, New Brunswick, a large group of citizens gathered at the local CBC office to voice their anger and support.

Television news shows now viewed in New Brunswick on ATV and Global are produced in Halifax. The CBC produces the only made-in-New Brunswick news show. News programs coming out of Halifax and Toronto, as my honourable colleague pointed out, cannot speak to New Brunswick or reflect New Brunswick and its issues as effectively as a program emanating in New Brunswick, for New Brunswick.

I remind honourable senators that the Broadcasting Act requires the CBC to serve the needs of the regions of Canada and is supported by the taxpayers of Canada. I add my voice to those of all political parties in the New Brunswick legislature who recently passed a resolution calling on Ottawa to preserve the CBC in New Brunswick. We must prevent the CBC from eliminating our regional news shows.

## INTERNATIONAL JOINT COMMISSION REPORT ON RED RIVER FLOOD

**Hon. Mira Spivak:** Honourable senators, recently the International Joint Commission released its final report on the disastrous Red River flood of three years ago and included some very good suggestions for government and community action now to prepare for the next major flood in the river basin. Among its surprises was the finding that flood waters had carried several pollutants more than 100 miles north and deposited them in Lake Winnipeg. The Red River empties into Lake Winnipeg about 37 miles north of Winnipeg. It is the world's tenth largest freshwater lake and provides a livelihood to about 850 licensed commercial fishers, their families and their employees.

One of these pollutants carried north was toxaphene, a pesticide banned in Canada and the United States in 1982. It is a persistent organic pollutant, which means it does not quickly break down in the environment and, in fact, can build up with each step in the food chain. Various species of sport and commercial fish in the lake were tested. Their flesh contained increased levels of toxaphene. It is presumed to have come from a flooded agricultural warehouse near Grand Forks, North Dakota, although flooded farms on both sides of the border may also have contributed to the estimated 100 pounds of new toxaphene in the lake.

The World Wildlife Fund has highlighted this incident in its excellent, recently published map of significant persistent organic pollutant contamination in Canada.

As members of the International Red River Basin Task Force noted, flooding is a fact of life along the Red River. Governments need to take immediate steps to ensure that all banned materials such as toxaphene are removed from storage sheds in the Red River flood plain. That was the task force recommendation. I might add that it makes good sense in other flood-prone areas.

Honourable senators, I hope the government will heed this recommendation and work with the provinces, neighbouring states and federal officials in the United States to ensure that banned pesticides do not end up in our rivers, our lakes, or in the fish on our table.

### FOREIGN AFFAIRS

#### COLOMBIA—RECOGNITION OF CANADIAN EMBASSY OFFICIALS IN FURTHERANCE OF PEACE PROCESS

**Hon. A. Raynell Andreychuk:** Honourable senators, I should like to commend the Government of Canada for its leadership role in encouraging peace in Colombia. I wish to emphasize, in particular, the dedication and commitment to the cause of human rights and international peace as displayed by the staff of the Canadian embassy in Bogota. At great personal risk, individual members of the Canadian embassy have travelled to remote areas of Colombia to investigate massacres of innocent civilians and to give support to those who are on the front lines helping to administer the peace process. Most notably, amongst the organizations in these areas is the Peace Brigade International, which has a close association to Canada and an office in Toronto.

On February 19, 2000, in the remote village areas of Urabá and Antioquia, Colombia, five individual civilians were murdered, bringing the total at that time to 65 people in the San José de Apartado area who have been murdered since the foundation of the peace community, which was to be a demilitarized zone for the return of civilians to their homes. It is a highly remote area, difficult to access, and it would appear that the majority of murders have been at the hands of members of the self-defence or paramilitary groups.

I therefore call attention of the Senate to the excellent work that the embassy continues to provide on behalf of Canada. I also urge Minister Axworthy to step up his contacts with the president, foreign minister and Government of Colombia to ensure that the Government of Colombia continues to give its full commitment and resources to the assurance of the peace process and to the security of individual Colombians.

As honourable senators know, recently many workers have been brought back from the field. They are stretched to the limit. They are working, I believe, with less than adequate compensation, yet they continue to do admirable work on our behalf. It is something that should be noted in this chamber. I hope that the Leader of the Government in the Senate

will convey to Minister Axworthy that their works are not going unnoticed.

[Translation]

### COMMITTEE OF SELECTION

#### SIXTH REPORT PRESENTED

**Hon. Léonce Mercier,** Chairman of the Committee of Selection, presented the following report:

Wednesday, May 17, 2000

The Committee of Selection has the honour to present its

#### SIXTH REPORT

Pursuant to Rule 85(1)(b) of the *Rules of the Senate*, your Committee submits herewith the list of certain Senators nominated by it to serve on the following committee:

Special Senate Committee on Bill C-20

The Honourable Senators Beaudoin, Bolduc, Kinsella, Murray, Nolin, Rivest, in addition to the nine Senators identified in the motion adopted by the Senate on May 16, 2000.

Respectfully submitted,

LÉONCE MERCIER,  
*Chairman*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Mercier, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

• (1350)

### ADJOURNMENT

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Thursday, May 18, 2000, at 1:30 p.m.

**The Hon. the Speaker:** Honourable senators, is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.



## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTING OF SENATE

**Hon. Mira Spivak:** Honourable senators, I give notice that on Thursday, May 18, 2000, I will move:

That the Standing Senate Committee on Energy, the Environment and Natural Resources have power to sit at 4:30 p.m. on Tuesday, June 6 and Tuesday, June 13, 2000, for the purpose of hearing witnesses on its study of Bill S-20, to amend and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

## QUESTION PERIOD

### HUMAN RESOURCES DEVELOPMENT

#### PRIVACY COMMISSIONER'S REPORT—DATA BANK ON DETAILS OF PRIVATE CITIZENS—SAFEGUARDS BY GOVERNMENT

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, yesterday, the government tabled in the Senate the report of the Privacy Commissioner. I am sure that those who read that report were as startled as I to read that the government has been building an electronic information data bank on every Canadian, that traces us from birth to death. Even more startling, honourable senators, is that, of all departments, the Department of Human Resources Development has constructed a massive data base on the most minute and personal details of the lives of ordinary Canadians. Obviously, the parallels between this data bank and the world of George Orwell's book *1984* are chilling.

Given the pervasive nature of the Internet, electronic data transfers, organized crime and fraud, the highly reported case of Mafia Boy, and other potential unauthorized access to this data that the Government of Canada has collected, can the minister inform the Senate whether there exists in the policy of his government a legislative framework that will limit access to these potentially highly exposed private files on every Canadian?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for raising this very important issue that was highlighted in the report of the Privacy Commissioner tabled yesterday. I have not had an opportunity to review that report in great detail, but the Privacy Commissioner did highlight the extent to which information in this age of information technology is being gathered. He also highlighted the requirement that information be dealt with on a confidential and appropriate basis.

I was reassured, in my very brief perusal, that the Privacy Commissioner was not alleging that anything illegal was occurring. He did, however, call upon us to review this matter and, indeed, made some recommendations with respect to the Privacy Act.

I was also pleased that he noted favourably the recent enactment of Bill C-6, which passed this place a short time ago. He highlighted that bill as one of the most important privacy developments in the past 10 years.

He also made recommendations to the government for revisions of the Privacy Act. The government will take those recommendations and review and study them with a view to determining to what extent they may be put in place.

**Senator Kinsella:** Honourable senators, as I am sure the minister will recall, in his report the commissioner said:

Successive Privacy Commissioners have assured Canadians that there was no single federal government file, or profile about them.

Is there or is there not a single file in the data bank of the Government of Canada that contains this data on us? Were the current commissioner and his predecessors wrong when they said there is no such file? Is there a file? If there is such a file, what is the government's position on that?

**Senator Boudreau:** Honourable senators, I think the commissioner was alerting Canadians to the amount of information that is contained in the Human Resources Development Department. The commissioner did acknowledge that that department has made some progress toward making information less accessible. The number of people in the department with access to the encryption capacity has been reduced quite dramatically, from approximately 50 people to six. Do not hold me to those exact numbers, but I think that is the magnitude of the improvement that has been made.

With regard to whether there is one overall file, my impression from the Privacy Commissioner's report is that there is not, but I shall certainly make further inquiries. I understood the commissioner's comments to deal with the HRDC situation specifically.

• (1400)

**Senator Kinsella:** Honourable senators, in light of the concern of the Privacy Commissioner, can the Leader of the Government in the Senate indicate if we can expect a massive overhaul of the Privacy Act in the foreseeable future?

**Senator Boudreau:** Honourable senators, the recommendations contained in the report are being taken seriously and are being addressed in an immediate fashion. Indeed, HRDC has already implemented, and is continuing to fast-track, improvements arising from the report. As a whole, the government will be taking these recommendations most seriously. I cannot give an exact time frame for any potential action. However, I am confident that such action will follow in a most efficient way.

[Translation]

**Hon. Roch Bolduc:** Honourable senators, I read the report by Mr. Phillips, the Privacy Commissioner. What is going on is a serious matter. In my usual candour, I always believed that after filing my tax return with the Department of National Revenue, I would know how much I owed, send a cheque to Revenue Canada, and the matter would be closed. Nobody talked about it. It was a secret between me and the department.

Later, we learned that the Department of National Revenue conducts audits with the Quebec department of revenue. If we tell Revenue Canada something but forget to mention it to its Quebec counterpart, we will receive a letter a few weeks later, informing us that we made a mistake. Officials from both departments contact each other when the time comes to grab our money.

Now, we are finding out that our tax returns will be circulated in the Department of Human Resources Development, which is so well managed. It really worries me to know that my tax return will go to that department, and not only my tax return, but a whole set of unbelievable data mentioned on page 66 of the report, namely education, marital/family status, language, citizenship and landed immigrant status, ethnic origin, mobility, disabilities, income tax data, employment histories, labour market activities, use of social assistance and employment insurance. Really! This is truly Kafkaesque! And this is happening in Canada!

Do you know what it means when they get our tax returns? They know not only about our salary in the Senate — everyone knows it — but also about all our investments, income, et cetera. Furthermore, they circulate all that information to other departments. There are 25,000 employees in that department. This is awful!

[English]

**Senator Boudreau:** Honourable senators, I can appreciate the honourable senator's concern, particularly with the knowledge of his assets and business activities.

Of the thousands and thousands of people who may be involved in HRDC, the information I have is that, until recently, there were approximately 50 people in the department who could gain access to this information through the special encryption capacity. That number has been reduced to something in the order of six.

I do not mean to make light of any concerns with respect to privacy. I do not think there is any allegation in the report that any such information is being turned over for public use or anything of that nature. However, we must be ever vigilant. The degree of vigilance will increase as technology increases and as the capacity to retain, transfer and cross-correlate information grows by leaps and bounds.

The government is taking very seriously the report of the Privacy Commissioner. Clearly, it must meet the challenge that

the new technology brings to gather information to best design government programs, to get the most effective use therefrom and, indeed, to measure outcome results. In order to do that, all this information is required, and at the same time the privacy of individual citizens must be protected.

[Translation]

**Senator Bolduc:** I am not doubting the intentions of the officials. I was myself an official and I have, therefore, a lot of respect for these people. I would like to read you the quote that goes with this business:

[English]

Of all the tyrannies, a tyranny exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busybodies. The robber baron's cruelty may sometimes sleep, his cupidity may at some point be satiated, but those who torment us for our own good will torment us without end, for they do so with the approval of their conscience.

[Translation]

This leads me to ask you a second question. The commissioner tells us that the department may provide the data under contract to private research firms for the purposes of planning, producing statistics or research and assessment. Where will that lead us? Soon, everything will be on the Internet. I am horrified. You must introduce a bill to prevent this craziness, or I shall introduce one myself.

[English]

**Senator Boudreau:** Honourable senators, once again, let me say that I appreciate the concern of the honourable senator. I shall relay his concern to my colleagues in cabinet.

It is a challenge to find the appropriate balance. That challenge will increase, and will become ever greater, in particular as it applies in areas of health, for example, where the privacy and the necessity for confidentiality is absolutely critical. There is an increasing necessity to manage the system. How to accommodate one with the other is a challenge for government. The recommendations and the report of the Privacy Commissioner will no doubt be of great assistance in meeting that challenge.

**Senator Kinsella:** Honourable senators, clearly, the utilitarianism principle upon which the minister is now relying speaks directly to John Stuart Mill, that great philosopher of liberalism.

The minister mentioned in reply to a question a moment ago, "Oh well, in HRDC there may not be a whole bunch of people — it might be down to six or seven — who have access to this data bank." Surely, that is not the question. The question is: Does HRDC have access to all information, or is there any information about Canadians to which government does not have access?



**Senator Boudreau:** Honourable senators, the commissioner dealt with the specific reference to the HRDC situation in his report. I am not party to exactly what information HRDC gathers, and for what purposes. The comments made by the Privacy Commissioner have been taken seriously and they have to be addressed.

I make the point again that this is a challenge that faces government in the next decade and beyond. It is something which did not exist 20 years ago. It exists because technology has made information storage, transfer and correlation available, which can have a positive effect in some areas. However, there is also the issue of privacy to be considered. As we go forward, I hope that we continue to improve, as we did with Bill C-6, the capacity of government to ensure privacy for its citizens as it concerns this type of information.

DATA BANK ON DETAILS OF PRIVATE CITIZENS—  
VERIFICATION OF ACCURACY OF INFORMATION

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, in Quebec, as the minister knows, the law provides that anyone whose credit is challenged may go to the credit bureau, which analyzes credit and supplies that information to potential lenders, to find out whether their file is accurate. Can the minister tell us if a Canadian can access the HRDC file the department has on him or her to ensure that the information therein is accurate?

• (1410)

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I would have to rely on someone more familiar with the legislation than I to answer that question, but citizens in this country do have an opportunity, through relevant legislation, to seek information from government.

**Senator Lynch-Staunton:** My question is: Can I have a copy of the information on me in that data bank, whether or not the government is entitled to it, to ensure that at least it is accurate?

**Senator Boudreau:** Honourable senators, I can inquire of the department as to what their treatment is of such a request under relevant legislation.

[Translation]

DATA BANK ON DETAILS OF PRIVATE CITIZENS—  
AVAILABILITY OF INFORMATION TO OTHER DEPARTMENTS

**Hon. Fernand Roberge:** Is the Leader of the Government in the Senate telling us that the RCMP or other departments have access to this information?

[English]

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, to what extent information is available across departments is something on which I would have to inquire. There is some access, as has been indicated in the report, but I am not familiar with the detail of the report yet, as it was

tabled only yesterday. I can make those inquiries for the honourable senator.

## CANADIAN BROADCASTING CORPORATION

### NEW BRUNSWICK—EFFECT OF PROPOSED CUTS

**Hon. Erminie J. Cohen:** My question is directed to the Honourable Leader of the Government in the Senate, who, being a Maritimer, realizes the importance and necessity of a CBC presence in New Brunswick and the other Maritime provinces. The President of the CBC and its board members will be meeting during a retreat in Saint Andrews, New Brunswick, on May 26. They undoubtedly will be discussing the elimination of regional news shows as they have not yet approved the plan.

Will the honourable leader use his good office to convey to his government the deep concerns of New Brunswickers who fear the proposed cutbacks will gut the news operation by the CBC in New Brunswick and result in the disappearance of our supper-hour newscast, “NB-Now”?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I am more than happy to convey not only the views of the honourable senator and others who have spoken here on this issue, but to add to those voices my own. It is a matter of some concern that this plan, which has been developed by the president and, as the honourable senator points out, has not yet been approved by the board, creates some real questions as to the future direction of the public broadcaster.

It would be a great pity if, in developing and building the new CBC, we allow a centralist, elitist approach to take from us the wonderful services that have been available in New Brunswick, Prince Edward Island, Newfoundland, Nova Scotia and in other regions. We have been speaking of the Atlantic provinces, but this is not an issue only for the Atlantic provinces, by any means. Other parts of the country face that possibility as well. Knowing the Atlantic region best, I can say that this is a point of view that I have no hesitation in carrying very forcefully to my colleagues.

### EFFECT OF PROPOSED CUTS— POSSIBILITY OF INCREASED GOVERNMENT FUNDING

**Hon. Lowell Murray:** I have a question by way of supplementary, honourable senators. Mr. Rabinovitch, President of CBC, has said that these decisions are being taken because of a shortfall of \$80 million facing the corporation. The question is: Does the government intend to pony up \$80 million to make up for the shortfall?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have not had the opportunity to follow everything Mr. Rabinovitch has said, but I did see a few quotations. On one occasion, I recall him saying that this was not a question of money, that this was a plan, a direction and a philosophy. One wonders if part of that plan is reducing advertising revenues substantially as the corporation moves forward. That may, in fact, reinforce the belief that it is not simply a matter of money.

I think it may be a matter of philosophy. We are faced with the situation now in government where, on the one hand, the CBC is an arm's length corporation, and we all know that that is generally a good thing. We would not want a government to be directing a national communication network on a day-to-day basis.

**Senator Lynch-Staunton:** You tried.

**Senator Boudreau:** On the other hand, having said that, it is funded quite significantly by public money, and one would have thought that it enjoyed a national mandate. It certainly enjoyed, and continues to enjoy, national support. The irony is perhaps that that support is highest in areas where the service is most at risk. I do not think it is simply a question of money.

#### PRESENCE OF PRESIDENT AT LIBERAL CAUCUS MEETING

**Hon. Lowell Murray:** Honourable senators, I take up the minister's comment that the corporation is at arm's length from the government. If the government holds to that view, what was Mr. Rabinovitch doing at a meeting of the Liberal caucus executive last week?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I suspect that those MPs were very interested in an opportunity to examine Mr. Rabinovitch. I do not know this, but was an invitation from the Conservative MPs rejected? Was there such an invitation, rejected by him? I do not know.

#### EFFECT OF PROPOSED CUTS—REQUEST FOR UPDATE ON GOVERNMENT LEADER'S EFFORTS

**Hon. Donald H. Oliver:** Honourable senators, my question is to the Leader of the Government in the Senate, and it still relates to the issue of the CBC. He will recall that I first rose in this chamber on April 6, more than 40 days ago, to raise with him problems of the potential CBC cuts in Atlantic Canada. At that time, he indicated in his response that he did not have much information on the matter but he was sympathetic to it and would do something about it. Could he tell this house today what he has done in the last 40 days to ensure that valuable jobs are not lost and that important services of the CBC to Atlantic Canada are not lost?

**Hon. J. Bernard Boudreau (Leader of the Government):** Before I answer that specific question, honourable senators, I should say that, a moment ago, I was informed by my colleagues that the gentleman in question, the president, did meet with members of the Canadian Alliance caucus as well. If he did not meet with the Conservative caucus, perhaps there was no such request. I would find it surprising that, if a request was made by the Conservative caucus, he would meet with the Liberal caucus and meet with the Canadian Alliance caucus but refuse to meet with the Conservative caucus. I can only assume that no request was made. I may be wrong, but that seems to be the case. Perhaps the Canadian Alliance felt they were

representing all of the opposition parties when they met with the president.

As to the honourable senator's specific question, I certainly have had an opportunity to familiarize myself in more detail with the challenges facing the CBC service regionally, and have made my views known, both to my colleagues and to others, and I shall continue to do so.

## INDUSTRY

### SHIPBUILDING—DEVELOPMENT OF NATIONAL POLICY

**Hon. Brenda M. Robertson:** Honourable senators, I have a few questions for the Leader of the Government in the Senate about a national shipbuilding policy. It is an urgent priority for the country. Shipyards are located across Canada, as we all know, in British Columbia, Ontario, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland. The shipyards have the capacity to directly employ over 10,000 Canadians but, sadly, they currently employ fewer than 4,000. It is a very sophisticated business. There are many spin-off, high-tech industries related to shipbuilding. It has been estimated that a vibrant shipbuilding and marine structures industry could create up to 6,000 full-time, new-technology, high-wage and high-skill jobs across Canada, in addition to the figures I mentioned before. This generates millions of dollars of revenue for the federal government through increases in income tax, EI and CPP payments.

• (1420)

Is the Leader of the Government able to report on any concrete progress being made by the shipbuilding directorate, which was recently re-established in the Department of Industry, in developing a new building policy?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, my contact on this important subject has been with the minister. I am aware that, through his department and indeed in person, he has continued the dialogue with the stakeholders in an attempt to find an appropriate way to deal with what are upsetting global trends in the shipbuilding industry, which have impacted severely on any number of countries. The global shipbuilding situation has been such that a small number of countries have taken over a huge portion of the market.

Honourable senators, there are no easy answers to this question. I have followed the situation enough to have realized that fact early in the game. Canada is not alone in experiencing the negative impact seen specifically in the Saint John shipyard as well as other yards.

The minister continues to work with the stakeholders in this important area, but I have nothing specific to report at this point.

**Senator Robertson:** I appreciate the minister's answer, but I do not agree with everything he has said.



## LABOUR

### SHIPBUILDING—INVOLVEMENT OF MINISTER IN DEVELOPMENT OF NATIONAL POLICY

**Hon. Brenda M. Robertson:** Honourable senators, the Minister of Labour is reported in the press as having said that she started working on a new shipbuilding policy when she was first appointed to cabinet in November of 1998. Is she working independently or are other efforts inside government working with her? Where exactly does the Minister of Labour fit in the policy development process? We know from the government's policy document on the Atlantic provinces that a shipbuilding policy was acknowledged, but time is running out on us. The decision of the Irvings to seek the building of necessary vessels offshore is a tremendous blow to the market. We really need more distinct answers.

The minister is also reported in the press to have said that when the new shipbuilding policy becomes official, she will talk about it. When will that be?

I think it is possible that when the official announcement is made, we will be into an election campaign, and the Minister of Labour will be speaking as the co-chair of the national Liberal campaign team as well as to a belated shipbuilding policy.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I do not presume to comment on newspaper reports of comments made by my colleague from New Brunswick. However, I shall say, without disclosing or breaching any cabinet confidences, that this issue has been addressed actively within the Department of Industry, in cabinet committee and in cabinet as a whole. In fact, the minister has participated in all of those discussions and continues to do so.

It is true that the Irvings, owning the shipyard in Saint John, decided to have two of their major shipbuilding contracts performed elsewhere.

**Senator Kinsella:** What about Canada Steamship Lines?

**Senator Boudreau:** That is symptomatic of the nature and extent of the problem, but I can tell honourable senators that Minister Manley continues to work and to dialogue on this issue. I was present at a meeting recently at my office in Halifax when he met with some of the stakeholders, including the unions involved. I think he is making every effort to come to grips with a very difficult problem.

## DELAYED ANSWERS TO ORAL QUESTIONS

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on May 2, 2000, by Senator Kinsella, regarding the replacement of Sea King helicopters, clearance to fly aircraft in United States airspace; a response to questions raised in the Senate on May 3, 2000, by Senator Andreychuk and Senator Spivak, regarding the farm crisis in the Prairie provinces,

flexibility of aid programs, government initiatives on international subsidy issue and the low rate of return to producers; and a response to a question raised in the Senate on May 4, 2000, by Senator Bolduc, regarding the approval process of pharmaceutical products and the effect of delays on investment by companies.

## NATIONAL DEFENCE

### REPLACEMENT OF SEA KING HELICOPTERS—CLEARANCE TO FLY AIRCRAFT IN UNITED STATES AIRSPACE

*(Response to question raised by Hon. Noël A. Kinsella on May 2, 2000)*

Canada has a reciprocal agreement with the United States that allows Canadian military aircraft, including the Sea Kings, to fly over American airspace. Under the agreement, Canadian military aircraft are considered "state owned" and as such are not subject to certain Federal Aviation Administration (FAA) regulations, mainly regarding airworthiness certification. Similar arrangements apply for American military aircraft flying over Canadian airspace.

Essentially, under the reciprocal agreement, the country of ownership is responsible for declaring its military aircraft airworthy, while the country in which the aircraft wishes to operate recognizes the other's airworthiness process. When operating in an American civilian airspace, Canadian military aircraft utilize FAA flight information publications and follow FAA air traffic control procedures.

In the case of the Sea King, the Air Force indicates that there are no technical airworthiness concerns that preclude the helicopter from flying in the United States.

## AGRICULTURE AND AGRI-FOOD

### FARM CRISIS IN PRAIRIE PROVINCES—FLEXIBILITY OF AID PROGRAMS—GOVERNMENT INITIATIVES ON INTERNATIONAL SUBSIDY ISSUE—LOW RATE OF RETURN TO PRODUCERS—GOVERNMENT RESPONSE

*(Response to questions raised by Hon. A. Raynell Andreychuk and Hon. Mira Spivak on May 3, 2000)*

## QUESTION

If 95 per cent of the farm credit corporation accounts nationally and 93 per cent in Saskatchewan are up to date at the end of March 2000, does this mean that 5 per cent of the Farm Credit Corporation clients nationally and 7 per cent in Saskatchewan are suffering serious financial difficulties? Shouldn't the government take responsibility and shouldn't there be rules in the farm credit system to help the most needy.

**ANSWER**

Given the low grain and oilseed prices, the level of the Farm Credit Corporation loan arrears for grain farmers is up somewhat from last year. However, this in no way compares with the level of arrears in the 1980s. The percentage of loans not in good standing was three to four times the levels of today. Nationally, only 82 per cent of the loans were in good standing in 1988 compared to 95 per cent in March 2000.

Many of the farmers with Farm Credit Corporation loans that were not up to date on March 2000 will be able to bring their loans up to date in the future and the Corporation will continue to work with clients on an individual basis. The level of arrears in Saskatchewan did drop from \$12 million at the end of February to \$8.4 million at the end of March 2000. This is only 0.67 per cent of the portfolio of \$1.26 billion in Saskatchewan.

This reflects the work of the FCC staff with individual clients along with the timing of receipts, such as grain deliveries, Canadian Wheat Board payment adjustments to initial prices and program payments and withdrawals.

The FCC is encouraging their customers who are anticipating problems to contact their local offices to discuss payment options.

Farm safety net program payments will help farmers bring their loans up to date. AIDA, NISA, and the \$400 million provided to Manitoba and Saskatchewan farmers will help many with their payments to the FCC, banks, credit unions suppliers, and others.

In the end, there will be some farmers who will not be able to continue because of financial pressure. For some, even higher prices may not help. This does not mean that they are bad farmers. Some have too much debt or have experienced ongoing production problems. There may be some who feel that they do not want to continue farming because of uncertainties related to income.

The Minister is working with his provincial colleagues on safety net programs that will help farmers through periods of cyclical market downturns and production problems. The primary focus of the government is maintaining and developing the sector, but perhaps we also need to discuss the issue of whether we should be providing help to those who need to find an alternative to farming.

**QUESTION**

Is it impossible for farmers to make a profit? Shouldn't the FCC take this into account?

**ANSWER**

Though cycles make it difficult to generate profits in some years, most commercial farmers are running profitable, efficient businesses. While grains and oilseed producers are currently struggling with low prices, there are farmers in other sectors such as cattle who have seen very strong prices. The government has also seen the price of hogs rebound and the industry has returned to profitability.

Overall, the FCC portfolio is relatively strong reflecting the fact that most of its clientele are managing under current conditions with some doing extremely well. The government has heard no statements from other lenders that their farm loan portfolios are a problem.

The FCC is working with farmers having financial difficulties and it is encouraging clients to talk to FCC staff if they expect to have problems making their loan payments.

**QUESTION**

What is the government doing on the subsidy issue internationally?

**ANSWER**

With respect to the key issue of subsidies, Canada is pressing for the complete elimination of export subsidies as quickly as possible, and maximum possible reduction or elimination of production and trade distorting support, including an overall limit on domestic support of all types.

In pursuit of these goals, Canada will be presenting detailed proposals on our initial position in the negotiating meetings of WTO Committee on Agriculture which will meet, three, or possibly four, times this year. These detailed proposals, on the core areas, including market access, domestic support and export competition, will explain our ideas and offer options that reflect our initial negotiating position.

It is important that Canada make proposals early in the negotiating process in Geneva to build support for Canadian ideas and approaches.

Canada will also participate in the development and presentation of proposals by the Cairns Group.

These detailed proposals are being developed in consultation with other government departments, at both the federal and provincial level, as well as with industry, principally through the Agriculture, Food and Beverage Sectoral Advisory Group on International Trade (SAGIT). Other stakeholders will also be consulted depending on their interest, and the specific topics to be covered.



## QUESTION

Although the question was phrased in terms of low rates of return to producers, the real issue is the share of the value of food products received by producers compared to other stakeholders in the food chain.

## ANSWER

— Due to the wide range of activities such as processing, inspection, transportation, storage, handling and marketing, that must take place before a farm product reaches the Canadian consumer, farm prices average about 20 per cent to 25 per cent of the value of food products sold in Canada. These relationships range from a low of about 1 per cent for alcoholic beverages sold in restaurants to more than 30 per cent for meat products sold in grocery stores. This proportion is generally lower for products sold in restaurants because these products require more preparation and hence cost more than products sold in grocery stores. The share received by producers, by itself, cannot be used to conclude that producers are being treated unfairly.

— This situation is also the case in other developed countries such as the United States. Furthermore, the level of farm value appears high compared to other products since, in general, the raw resource material of manufactured consumer products comprises only about 10 per cent of the final price of the product.

## HEALTH

### APPROVAL PROCESS OF PHARMACEUTICAL PRODUCTS— EFFECT OF DELAYS ON INVESTMENT BY COMPANIES

*(Response to question raised by Hon. Roch Bolduc on May 4, 2000)*

Health Canada's mandate is to protect the health and safety of Canadians, and the mandate of the Therapeutic Products Programme (TPP) is to ensure that the therapeutic products available to Canadians are safe, effective and of high quality.

The TPP has been, and continues to be committed to ensuring the drug review process is as efficient as possible. Between 1994 and 1996 review times were cut by 50 per cent. Currently, the time required to review a new drug substance is averaging 18 months, which is competitive with our international counterparts.

Drug companies, perhaps because of marketing considerations, often choose to seek approval of their

products in other jurisdictions before applying for a Notice of Compliance in Canada. This action delays the access of the Canadian public to new and promising drugs.

Health Canada's Therapeutic Products Programme (TPP) is engaged in several initiatives to enhance the transparency of the drug regulatory system and mechanisms for consumer and stakeholder communication. For example, one aspect of this transparency initiative will examine how the public can be involved in the drug review process and how this can be best achieved.

The TPP recently completed a functional review of the post-approval surveillance system and is now in the process of implementing changes. The continued access of consumers to safe and effective therapeutic products is the objective.

The first priority of new resources into the TPP's product licensing process will be to support the regulatory changes being made in the regulation of the clinical trials review process in Canada. To the extent that new resources are greater than the clinical trial need, they will be allocated to pre-market and post-approval assessment processes. Plans are underway, again under the oversight of a multi-stakeholder committee, to review and streamline the regulatory processes even further.

## ORDERS OF THE DAY

### MARINE LIABILITY BILL

#### THIRD READING

**Hon. George J. Furey** moved the third reading of Bill S-17, respecting marine liability, and to validate certain bylaws and regulations.

He said: Honourable senators, I am pleased to rise before you today for third reading of Bill S-17, respecting marine liability.

The proposed legislation introduces for the first time the concept of shipowners' liability for the carriage of passengers and new rules for the apportionment of liability in maritime cases. At the same time, this bill consolidates existing marine liability regimes into a single statute.

I should like to take a few moments, honourable senators, to briefly review Bill S-17 and its main provisions.

The introduction of a new regime of shipowners' liability to passengers is the key substantive element of the bill. This regime, set out in Part 4, is an initiative borne out of concerns for those passengers who may be involved in an accident during maritime transport.

There are currently no statutory provisions in Canadian law that establish the basis of liability for loss of life or personal injury to passengers travelling by ship. The intent of the regime of liability to passengers is to ensure that in the event of a loss, particularly a major one, the claimants have a guarantee of a set level of compensation and, at the same time, to provide to shipowners a means for determining their potential exposure to passenger claims.

Of equal concern here is the absence, with the exception of the Quebec Civil Code, of Canadian legislation specifically preventing shipowners from contracting out of their liability to passengers. Such contractual exemptions are null and void in other countries, notably in the United States, France and Britain. Contracting out of liability is generally absent in other modes of transport in Canada.

There appears to be no basis for maintaining the contractual freedom currently enjoyed by water carriers. The new regime for liability to passengers will therefore specifically prohibit such practice, and this will harmonize Canadian legislation with that of other maritime nations.

Honourable senators, the second policy objective of this bill is new legislation for apportionment of liability in maritime cases. This legislation is needed to deal with important aspects of liability in situations where the claimant has been partly responsible for his or her loss.

This is a very difficult and confusing area of Canadian law, due to the absence of legislation relating specifically to maritime cases. In the past, two rules of common law have been the source of serious concern to the entire maritime community. First, the common-law defence of contributory negligence that prevents a claimant from recovering anything if the defendant can prove the claimant's own negligence, even in the slightest degree, has contributed to the damages.

[Translation]

• (1430)

Second, the defendant required to pay the claimant damages cannot turn around and claim a contribution from others who may have contributed to the claimant's loss.

[English]

In its recent decisions, the Supreme Court of Canada ruled that it was unjust to continue to apply the old common law rules to such claims. In light of this decision, therefore, new legislation is needed to establish a uniform set of laws that apply to all civil wrongs governed by Canadian maritime law.

As I have already stated, honourable senators, the new act will also consolidate existing marine liability regimes and related subjects, which are currently located in separate pieces of legislation. This "one-stop shopping" approach to marine liability will avoid, in the future, the proliferation of separate legislative initiatives in the area of shipping policy.

In preparation for this new legislation on passenger liability and apportionment of liability, it became evident that it was not very efficient or user friendly to leave the various liability regimes scattered all over the legislative map. Thus, we are bringing forward this legislation, which will consolidate all marine liability regimes into a single statute. This includes provisions on fatal accidents and personal injuries, limitations of liability for marine claims, liability for carriage by water, and liability and compensation for pollution damage.

Honourable senators, in addition to the existing regimes that will be consolidated in the proposed Marine Liability Act, there are other liability regimes on the horizon, notably those currently being developed in the International Maritime Organization. This includes the proposed regime of liability for spills caused by ships' bunkers, and a new protocol to the Athens Convention on Compulsory Insurance. I believe the proposed Maritime Liability Act will serve as well in the future as a logical framework for these new regimes, should Canada decide to adopt them.

Honourable senators, I should like to express my sincere thanks, on behalf of the government, to Senator Bacon and her Standing Senate Committee on Transport and Communications for their efforts during the hearings on Bill S-17. This bill was dealt with, including amendments, in a very timely and efficient manner.

I should note as well that the marine industry groups, among which were the Canadian Maritime Law Association, the Shipping Federation of Canada and the Canadian Board of Marine Underwriters, appeared before the committee and expressed their general support for this piece of legislation.

In response to the submission of the Canadian Maritime Law Association, a motion to amend the proposed legislation was introduced. The association advised that the legislation as proposed would extend the Athens Convention contained in Part 4 of the bill to all persons carried by water, including those carried on pleasure crafts. As it was not the intent of the legislation to apply this part to passengers carried on pleasure craft, the bill has been amended accordingly.

In conclusion, honourable senators, the key features of the proposed Marine Liability Act include a new regime of shipowners' liability to passengers, a new regime for apportionment of liability, and consolidation of existing liability regimes.

Honourable senators, we have in front of us a bill which will modernize and improve our legislation for maritime claims to ensure that it meets current Canadian requirements in the area of shipowners' liabilities, in particular, passenger liability.

I should like to thank Senator Angus for his support of this legislation. Absent his few errant comments about timeliness, his heart was certainly behind the legislation.

I urge all honourable senators to join with me in supporting the bill, including the amendment proposed by the standing committee.



**Hon. W. David Angus:** Honourable senators, first, I should like to thank the Honourable Senator Furey for his kind remarks. I am pleased, once again, to support speedy passage of Bill S-17, this time at third reading.

As mentioned yesterday by Senator Bacon, in moving adoption of the report of the Standing Senate Committee on Transport and Communications, the bill received widespread and unanimous support in committee hearings from all witnesses representing Canada's domestic and international shipping industry and from related stakeholders. It is gratifying, frankly, to note that departmental officials at Transport Canada, as well as the government, reacted so swiftly and so positively to the amendments proposed by the Canadian Maritime Law Association through its president, Barry Oland. Although these amendments appeared on their face to be *de minimis*, they are, nonetheless, important to, and in, the very best interests of thousands upon thousands of Canada's small boat and pleasure craft owners and operators.

Honourable senators, when I spoke to Bill S-17 at second reading on April 4, I stressed the importance of uniformity of international marine and shipping legislation, and the need for Canada to do its part by promptly and effectively implementing into our domestic laws those international maritime conventions and treaties that Canada supports and to which it subscribes and has duly ratified at the diplomatic level. In this regard, honourable senators, I attended meetings of the Comité Maritime International executive council at its annual assembly in London, England, just last week. During these CMI proceedings, it was noted with pleasure and respect that Canada is finally in the process of implementing the Athens Convention into its national law via Bill S-17. Hope was expressed that in future, Canada will demonstrate leadership and responsibility in this key area of uniformity of maritime law in a more timely way.

It was made clear at the CMI that there presently exists a problem internationally, respecting the expeditious and uniform implementation and interpretation of international maritime conventions. These sentiments were echoed by the Secretary General of IMO, William O'Neil, who is a Canadian and former head of the St. Lawrence Seaway authority. In consequence, a major maritime law seminar to be held in Toledo, Spain, September 17 to 21, this year, under the joint sponsorship of the CMI and the Spanish Maritime Law Association, will devote its entire first session to this important subject, and especially to the need for a concentrated effort to achieve better uniformity.

Honourable senators, I will be privileged to attend this seminar and am pleased to say that I have been asked to present a paper on this specific subject of implementation of international maritime conventions from a Canadian perspective. It will be both useful and interesting for me to be able to showcase this Bill S-17, hopefully, by that time, duly enacted by our Parliament and an integral part of Canadian domestic law.

Honourable senators, for these and for the other reasons I outlined at second reading, I enthusiastically support third

reading of this bill. I compliment the work of Senator Bacon and her committee and Senator Furey, and I urge the speedy passage of this legislation before Parliament rises for the summer break.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I wonder if I could invite Senator Furey to close debate on this bill.

**The Hon. the Speaker:** There is no closing debate on third reading. Senator Furey has spoken. He has exhausted his right to speak.

Are you ready for the question, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** It was moved by the Honourable Senator Furey, seconded by the Honourable Senator Gill, that the bill be read the third time now. Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read third time and passed.

• (1440)

#### **BILL TO GIVE EFFECT TO THE REQUIREMENT FOR CLARITY AS SET OUT IN THE OPINION OF THE SUPREME COURT OF CANADA IN THE QUEBEC SECESSION REFERENCE**

SECOND READING—DEBATE SUSPENDED

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference.

And on the motion in amendment of the Honourable Senator Stratton, seconded by the Honourable Senator Lynch-Staunton, that the motion be amended by deleting all the words after the word "That" and substituting the following therefor:

"Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference, be not now read a second time but that the Order be discharged, the Bill withdrawn and the subject-matter thereof referred to the Standing Senate Committee on Legal and Constitutional Affairs."

**Hon. Lowell Murray:** Honourable senators, I thought that one of my colleagues would be preceding me today. Perhaps she will speak a bit later.

This debate has been, as several have remarked, a most edifying one. The speeches given do honour to the Senate and to the honourable senators who have taken part. In fact, the quality of the debate here is, in itself, a reproach to those in another place who would cut the Senate out of the future parliamentary decisions which are prescribed in Bill C-20.

I could not hope to improve on the speeches that have been given in this debate, so I do not have very much to add on the bill. At this late stage in the debate, I should like only to make a few comments about the political climate in which this bill has come forward. I ask honourable senators to reflect on it because it concerns me, as I think it should concern all of us.

Let me begin with the observation that Quebec's influence, her bargaining power or her leverage, if you like, in the federation has never been weaker than it is at present. There are various reasons for this, but they are not particularly relevant to this discussion. If you want an illustration of that weakness, you need only look to the events of last year that led up to the signing of the social union agreement between the federal government and the nine English-majority provinces.

The ten provinces had worked out a principled position to take into discussions with the federal government on the future of social policy. However, as soon as the nine English-majority provinces saw the colour of Ottawa's money, that was the end of it. They abandoned the position. They left Quebec alone and they signed up.

I raise that history not to criticize any province in particular and certainly not as a comment on the content or substance of the social union agreement. I raise it simply to illustrate with what casual manner, with what insouciance, the nine English-majority provinces simply abandoned Quebec, as they had done together with the federal government in 1982 at the time of patriation of the Constitution.

There was a time when one or other of the English-majority provinces and/or the federal government would have been concerned with the need for everyone to go forward together on an issue such as the social union. For quite a few generations in my adult lifetime, Ontario, the linchpin of Confederation, kept a wary eye on these developments, and Ontario would not allow something to go forward until every effort had been made to bring Quebec on side. That is not so any more.

During part of the 1970s and even in the 1980s, post the patriation trauma, Alberta and Quebec were frequently allies in the federation. Certainly for Ontario, it was always a question of trying to keep things on a stable equilibrium. Ontario had to swallow hard sometimes in order to do that, but they always felt, and I think essentially the federal government felt, that it was necessary to do this in order to prevent unnecessary confrontation and division in the federation.

The situation today is that Quebec has no allies among the provinces of Canada. They can get together and issue a press release every so often, especially when it is a matter of complaining about the federal government's policy in this or that area or in demanding more money. The fact of the matter is, though, as I read it, that there is not a single premier in this country who is prepared to spend a nickel of political capital in order to ensure that the whole country moves forward on issues together and, in particular, to ensure that Quebec stays on side.

In this situation, where Quebec's bargaining power and her influence in the federation are historically weak, we should reflect on whose interests are served by such a state of affairs, whether it is the interests of the federalists or the interests of the separatists. We should ask ourselves how a bill like this, a policy like this, contributes to reinforcing national unity.

Quebec has historically been seen as the foyer of French Canada. It has always been seen to have a special responsibility, a special role, as the only jurisdiction in North America with a French-speaking majority. There is not even any interest on the part of the other provinces, much less appreciation, understanding or support, for Quebec in that role and responsibility. Think about the House of Commons for a minute. Think about how far we have gone, in my opinion, in the wrong direction, on the basic issue of English-French relations.

In this Thirty-sixth Parliament, the Leader of the Opposition over there has not been Robert Stanfield, who stood up with Pierre Trudeau and Tommy Douglas to support the Official Languages Act in 1969. He has not been Brian Mulroney, who stood up with Pierre Trudeau and Ed Broadbent in 1983 to send a message of solidarity and reassurance to the French-speaking people of Manitoba, a message that resonated very strongly about Canada in Quebec. The Leader of the Opposition has not been John Turner, who stood with Mr. Mulroney and Mr. Broadbent in support of the Meech Lake Accord in 1987.

The Leader of the Opposition in the House of Commons, in this Thirty-sixth Parliament, has been Preston Manning. Mr. Manning says in his book, *The New Canada*, that if anyone asks you to endorse a concept of Canada based on linguistic duality, they are asking you to endorse exactly the wrong thing. I think I am quoting him just about word for word.

• (1450)

Preston Manning and his followers, who form the second-biggest party in the House of Commons, reject — they deny absolutely, root and branch — the very concept of Canada that motivated these other opposition leaders and other governments in our past history. Remember also that the third-largest party in the other place is the Bloc Québécois, and we know where they stand.

If you examine the media at any level of articulation, honourable senators, whether it is the radio phone-in show, the pundit's corner or the professorial think pieces, the message is all the same. They say that we have moved on; we have moved beyond these old issues.



Lawrence Martin, who writes for Southam, says with regard to Quebec and the Atlantic provinces that:

As for the old Canada — Quebec and the Atlantic provinces — who cares?

He also said:

Furthermore, Quebec issues no longer resonate across the country the way they have for the last 40 years. On unity, the constitution and bilingualism, the fed-up factor predominates. Chrétien's tough rules on the referendum in his clarity legislation have diluted the blackmail threat Quebec politicians used with such telling effect to dominate the national debate.

Jeffrey Simpson describes in *The Globe and Mail* the attitude in much of English Canada to the Quebec issue in the classic quotation from *Gone With the Wind*, "Frankly, my dear, I don't give a damn."

Michael Bliss, the historian, describes the new Canada variously defined in regional or ideological terms, which leaves Quebec and the French-English issue and these other issues behind as part of a discredited past.

Honourable senators, I am the first to acknowledge that there is more to Canada than the French-English dimension. We have 133 years of history to prove it. However, that relationship is so much at the core of our history and our being, so central to our existence as a country, that if ever it comes apart, then the rest of the country will not be long in unravelling. The whole country will unravel.

There is no doubt in my mind that Simpson, Martin and these other journalists are describing the situation with some accuracy. If I needed anything further, I would refer to that most admirable and admired public man, the former premier of Alberta, the Honourable Peter Lougheed, who supports this bill. In a brief to the House of Commons legislative committee, he said:

Some have and will argue that this legislation, which is essentially process, should be accompanied by renewed efforts to accommodate some Quebec aspirations for greater control of their own destiny, i.e., the so-called "Plan A" initiatives.

With respect, I completely disagree — the time is now past for such initiatives and, in my judgement, the rest of Canada, and Western Canada in particular, have had their fill of this approach. It is yesterday's solution!

Honourable senators, Peter Lougheed has given up on the prospect of Plan A, of some measure or set of measures that might cement our unity, that might bind Quebec and the rest of the country closer together. Instead, he comes to offer his support for what is essentially a policy of confrontation.

Indifference, hostility, triumphalism in English Canada — this bill caught a growing wave of triumphalism in English Canada and it has brought it to high tide. Not since the War Measures Act was imposed 30 years ago has a government measure regarding Quebec enjoyed such enthusiastic support outside Quebec.

We should think about it. Mr. Manning supports this bill. Ms McDonough of the NDP, having denounced the principle one day, was spooked by the public opinion polls and, as the Prime Minister noted with some glee, she flip-flopped. Among the federalist leaders, only Joe Clark has maintained a principled opposition to the bill, and five of his elected caucus members have declined to follow his lead on it.

There is no doubt that there is great support for this bill in English Canada. Indifference, hostility, triumphalism toward Quebec, refusal to consider Plan A — where do we go? Shall we go with the flow?

**The Hon. the Speaker:** I regret to have to interrupt the Honourable Senator Murray, but his 15-minute time period for speaking has elapsed. Is the honourable senator requesting leave to continue?

**Senator Murray:** I shall ask leave. I shall not need the generosity of Senator Hays' 30 minutes, but far less.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I propose we give leave to Senator Murray to continue his comments for another 30 minutes.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Murray:** I thank honourable senators.

There is no doubt about the support for this bill, about what the climate of opinion is in English Canada, about the French-English relationship, about the relationship between Quebec, with its majority of francophones, and the rest of Canada, with its majority of anglophones. This climate of triumphalism is in the country, in Parliament and in the media.

• (1500)

That really leaves the issue with us. What will we do? Will we go with the flow? Will this bill strengthen the bonds between Quebec and the rest of Canada? The authors of this bill think they have Quebec cornered. They may find they have cornered themselves and cornered the country. If a referendum comes, the Government of Quebec will ask the question they want to ask, and the canvas they will use before the people of Quebec will be that the only way to get the rest of Canada to negotiate is to vote Yes no matter what the House of Commons may decide about the clarity of the question. In view of the quite crude provision in this bill, which states that the Commons will decide whether the majority is clear after the vote is held, the Péquiste government will tell the people not only that voting Yes is the only way to get the others to the table, but that the majority must be absolutely convincing and large beyond any doubt.

Meanwhile, we federalists will go in there with empty hands, unlike 1980 and unlike 1995, when our spokesmen and spokeswomen felt confident enough to suggest that, if Quebec voted No, there would be a renewal of Confederation. The government has now abandoned plan A, thrown it overboard, and whoever is left to lead the federalists in Quebec will be sent there empty-handed. That is what we are telling them with this bill. We will give them the stark choice: the constitutional status quo or outright separation.

I think at some point you will see people in English Canada realizing that they have been duped, misled by the federal government. The result will be a renewal of bitterness and recrimination, and that will not help much either.

This thing is sometimes described as Mr. Chrétien's legacy. I can hardly be described as a supporter of Mr. Chrétien, but I can think easily of a number of things in his political career to date that would make a much more honourable legacy than this bill. It reminds me of something I heard Mr. Bourassa say to Clyde Wells 10 years ago next month in that old railway station in the last days of the Meech Lake discussions. At a rather tense moment, Mr. Bourassa turned to Mr. Wells and said, "You will have saved your vanity and lost your country."

Honourable senators, the Supreme Court judgment had an excellent quotation from the Government of Saskatchewan, I believe, in which that government's attorney general, or its lawyers, told the court that a country is made up of a thousand threads of accommodation and compromise. That has been our history. I think we all know that. That, I think, is the Canada that everyone in this chamber believes in and would defend. That Canada, in which it is the lot of public people to try to contain extremes, avoid confrontation and promote unity, is the Canada that is most at risk with this ill-considered and ill-advised bill.

There were two speeches on this side of the chamber early in the debate which gave an interesting, indeed a very stark, counterpoint to the historical context. Senator Lynch-Staunton reminded us of some of the events that killed the hope of any French-speaking Quebecers of a pan-Canadian partnership and turned them inward to a more defensive "fortress Quebec" nationalism: the hanging of Louis Riel, the Manitoba school question, Ontario's Regulation 17. We do well to remind ourselves that these were the transgressions of our predecessors, of political actors like ourselves, whose better instincts deserted them and whose courage failed them at crucial moments in our history. In vain did the French-speaking people look to this very chamber in which we are meeting today, to the House of Commons and the federal government, to those institutions in which they had reposed such faith. In vain did they look to our predecessors for redress or security. That is one history.

The other history, which was told by Senator Rivest, referred to some of the things that happened under three fairly recent prime ministers: Pearson, Trudeau and Mulroney. Prime Minister Pearson had practised cooperative federalism. He was not afraid of asymmetry on issues like the Canada and Quebec pension plans, and he appointed the Laurendeau-Dunton commission which was the inspiration for the Official Languages Act, brought in under the Trudeau government in 1969. We could add other initiatives that were taken. There is the Meech Lake

Accord. Had it passed, we would not be debating this bill today. There is the successful attempt to give a role to Quebec and New Brunswick in la Francophonie. These are nation-building measures, measures which cement and reinforce unity, as distinct from the sad chapters that Senator Lynch-Staunton properly reminded us of.

I believe we have a choice here as to which of these historical legacies we will emulate.

**Some Hon. Senators:** Hear, hear!

**Hon. Jeremiah S. Grafstein:** Honourable senators, would Senator Murray entertain a question?

**Senator Murray:** Certainly.

**Senator Grafstein:** Before I ask my question, I shall make a comment.

As the honourable senator knows, I have some reservations with regard to some aspects of the clarity bill. I hope, as I said, that the committee will allow us to test the evidence as to whether or not the views held by some of us on this side with respect to some flaws or defects in that bill can, in fact, be explored. That remains to be seen.

Based on the honourable senator's argumentation, I have a different perspective and I should like his comment on this point: In 1955, one of the honourable senator's former colleagues, Senator Tremblay, issued a report, the report of the Tremblay commission. In that report, if I recall correctly — and I am reciting this from memory — he was concerned about the imbalance in Confederation between Quebec and the rest of Canada. When he took a look at economic power, he decided that economic power lay mostly in the hands of the federal government versus Quebec. Something like 75 per cent of all tax dollars was under the power and the jurisdiction of the federal government, and only 25 per cent was in the hands of the Quebec government. Therefore, he felt there was an asymmetry between the two, causing dislocation, and his recommendation in that 1955 report was that it should be 50/50. Today, however, we find an extraordinary circumstance. If we did an analysis similar to the one in the Tremblay report — and this has been accelerated in the last decade under the leadership of Mr. Chrétien — we would find, with respect to economic power, that it is now 75/25; 75 per cent in the hands of the Province of Quebec and 25 per cent in the hands of the federal government.

Some say that perhaps the devolution has gone too far. Let us just think about the things the federal government and this chamber have done in the last four or five years to ameliorate the concerns the Quebec: job training, in the hands of Quebec; additional magnificent tax points, in the hands of Quebec; social housing, now in the hands of Quebec; mining, now in the hands of Quebec; tourism, in the hands of Quebec. A constitutional amendment that the Quebec government requested, dealing with their educational system, was, after some great debate, granted. That was done in this chamber and the other chamber jointly. Finally, there was the 1996 constitutional veto bill that enhances Quebec's veto power.



• (1510)

How can one say fairly, aside from the clarity bill, that Quebec, under this particular administration, has not, in fact, achieved a satisfaction with a number of its concerns by the devolution of particular powers and tax points?

**Senator Murray:** I do not know how my honourable friend can speak about devolution of powers that belonged to the province in the first place. Let us put that on the record.

Second, I appreciate what my friend has to say about the Tremblay commission. I am not familiar with the detail of it, although I believe the senator is correct to have described it as he did. Provinces are now looking at their responsibilities, notably in the fields of health care and education, and they are once again protesting about the imbalance between their responsibilities and the revenues that are available to them by comparison with those that are available to the federal government.

I am aware of the argument that we have the most decentralized federation in the world. I understand how and why that argument is made. It must also be recognized that, in this country, only the federal government has a veto over any constitutional amendment, that only the federal government has unlimited taxing powers and that the federal government has a spending power in areas of provincial jurisdiction which is unfettered, unless one wishes to discuss the social union agreement.

In any case, my statement about the weakness of Quebec's bargaining position vis-à-vis all the other partners stands. I believe their bargaining position has weakened considerably. It is clear to me that the other provinces will pursue their own interests without any thought for Quebec's position. I am not necessarily complaining about that. The federal government and federal Parliament has a role in that respect.

Finally, with regard to Quebec's needs, the two that are most essential for Quebec is a constitutional recognition of its distinctiveness as the only French-speaking jurisdiction in North America and, second, protection against any loss of its representation in certain federal institutions, including this one, without her consent. Those are the two subjects that need to be addressed. If they are not addressed, we will have a serious problem.

**Senator Grafstein:** Honourable senators, I can only conclude by giving one further factual anecdote, and it is an anecdote because I was not at the meeting and I cannot confirm it.

Quebec tends to speak with many voices and one of the voices it spoke with from the governmental side was a tremendous stonewalling of the federal government's attempt to add increased support for post-secondary education.

Last year or the year before, there was a meeting of university presidents. All the university presidents from across the country were at this meeting, and while the government of Quebec said, "No more money to post-secondary education directly from the federal government," every university president from the

Province of Quebec was lauding the federal government and saying, "More, more more."

Which voice should we listen to, the voice of a separatist leader in Quebec, or the voices of the leaders of post-secondary education in Quebec?

**Senator Murray:** Post-secondary education is an interesting example. Many years ago, when grants to universities were first brought in, the Duplessis government in Quebec refused to allow the universities to accept them. There was a standoff, a confrontation. Mr. Diefenbaker of all people found an elegant way to solve the problem and Quebec universities got their federal money.

The present government brought in the millennium scholarship fund. I do not know what the university presidents had to say about it, but for a long time there was considerable objection, and not just on the part of the Government of Quebec, but even of student organizations.

Yes, they may speak with a different voice, but at the end of the day, on matters of this kind, which as my friend knows are within provincial jurisdiction, one must negotiate a suitable arrangement with the government that has the responsibility, the duly elected Government of Quebec.

By the way, honourable senators, I do not believe the people of Quebec want the federal government to turn its back on health care and post-secondary education. If I were sitting down with a blank sheet of paper, having been asked to rewrite the division of powers, I am not sure that I would make many changes at all. The problems with the division of powers lie in the way in which the federal spending power has been used over the years, and in the need to respect the fact that there are vastly different social problems and circumstances from one region to the other.

We could talk all afternoon about the problems the Premier of Saskatchewan or Newfoundland would tell you they have in the field of social policy. The problem has been in spending power and in respecting the vastly different circumstances across the country, and essentially, as I have said, in ensuring some security for Quebec by way of constitutional recognition of its distinctive role and some constitutional protection for Quebec in the federal institutions. If we could address those two areas successfully tomorrow, we would have a far different climate.

**Hon. John G. Bryden:** Honourable senators, I have a question for Senator Murray.

Senator Murray used the word "triumphalism." I am unfamiliar with that terminology. He also spoke about the clarity bill having the highest level of support in the country, more than any other bill that he could recall — his experience is greater than mine — other than the War Measures Act.

At the time of the War Measures Act, there was, rightly or wrongly, some sort of perceived crisis. In Senator Murray's opinion, what has given rise, other than the fact that the Reform Party is the Official Opposition in the House of Commons, to this feeling of triumphalism among Canadians outside of Quebec?

**Senator Murray:** Honourable senators, my short answer is that I do not know. I could speculate, I suppose. We all know how almost disparaged, discouraged and in some ways bitter the feeling was in the rest of Canada in the aftermath of the 1995 referendum in Quebec.

I could not identify the events in the intervening period that have given rise to what one journalist has called, "the fed-up factor." Another journalist describes the situation as, "Frankly, my dear, I don't give a damn."

This bill correctly showed the way. We have only to read the media and listen to the phone-in shows and hear some of the debates in the other place to see how much triumphalism there is. I think these people are misled. You hear them saying, "No more blackmail from Quebec," whatever that is supposed to mean. "If there is a referendum, it will be on our terms."

Quebec has moved beyond all these old issues. The rest of Canada has moved beyond all these old issues. There is a new Canada, says Michael Bliss, variously described in either regional or ideological terms, but, in any case, Quebec and the part of the country where you and I were born are not included.

I think there is a kind of fools' paradise, frankly. Victory at last, clarity at last — no, no.

• (1520)

**Senator Bryden:** If this is an indication of the people to whom my honourable friend has referred, the journalists and the pundits, it has been my experience that, by far, not all of them, and in some instances not many of them, are in advance of what they feel their readership, their public, wants to hear, or, in fact, believe. They do not take leadership roles. They are not in the business of formulating opinion. Indeed, as the honourable senator indicated, the polls generally have reflected that the general populous is in somewhat overwhelming support of the position that is taken.

Is Senator Murray indicating that the Michael Blisses, Jeffrey Simpsons, and maybe even, God forbid, the Preston Mannings of the world are generating this, or are they doing what they do normally, which is trying to catch the feeling that is there already so that they will be on the right side, whether they are promoting their causes or selling newspapers?

**Senator Murray:** In terms of the journalists to whom I have referred, I think they are simply portraying what they see or feel is there by way of incentive in the country. As I have tried to say, the sentiment is not just in favour of this bill. That would be one issue. It is the overall attitude — the fed-up factor, the triumphalism, the new Canada and all these other questions. I think that attitude is quite dangerous for Canada because Canadians will have a rude awakening one of these days. In the issues we are talking about here, and with the debate we are having today, we are taking up a discussion that runs through our history for more than 200 years, as my friend knows, and this issue will be with us as long as there is a Canada. For people to suggest otherwise is really very foolish, in my view.

I cannot resist the temptation to note that one or two of the columnists in the *National Post* seem to write for an audience of one, namely Conrad Black, or perhaps two, Conrad Black and Barbara Amiel. However, for the most part, I think the columnists to whom I have referred are simply reporting on what they see out there by way of public sentiment.

**Senator Bryden:** I will make one last comment. The honourable senator has said that this dynamic has gone on for a couple of hundred years and that it will continue, but it is probably healthy that it has gone on, and healthy that it continue.

There is a view, and it is part of my view, that the intention of this bill is not to try to bring an end to that road upon which we have travelled and will continue to travel. At least at this stage, given many of the things my friend has reviewed in his comments, it attempts to be a map of where the road can go, at least in the close future, as against any indication that this will be the end of continuing discussion or indeed of the country. Many different attempts, Meech Lake being one and Charlottetown being another, have tried to do that. This bill is a further attempt. Who is to say that it may be somewhat more successful than the others?

**Senator Murray:** We disagree on that point. I believe this bill does nothing to bind Canadians closer together. On the contrary, it manifestly divides the federalists in Quebec. We have seen that. If we look forward a year or two or more down the road to a referendum, who will lead us, the federalists, into that referendum campaign and what will that person say? Will we take part at all, depending on what the House of Commons decides?

In any case, after the two referendums in which we purported to offer something for the future, what do we have? We have now thrown Plan A overboard. We are going in there with empty hands to tell them, as we are coming close to telling them in this bill, that their choice is between the constitutional status quo on the one hand and outright separation on the other. I would say that this is the argument that federalists in Quebec least want to hear.

**Hon. Jean-Robert Gauthier:** I should like to ask a question of Senator Murray.

I think we are talking about two solitudes, mainly. I happen to be able to speak both languages, one by birth and the other one by economic necessity. The honourable senator did not mention in his speech anything about why the Senate is excluded. Do we have that much confidence in the present composition of the House of Commons? There are at least two parties in the House of Commons. One does not give a damn about Canada and wants out; the other one does not understand the fabric of this country and what contribution is made to Canada by having two official languages. It is possible that in a short while the structure and composition of the House of Commons could change, whereby the majority would not be one available to Canada as Senator Murray and I have seen it or as many of us in this house structure it.



I wish to ask a very simple question. I object to the division or possible breakup of my country. I believe this bill is the first step toward a division in this country. I deplore that. What would the honourable senator think of a decision made by the House of Commons that would either decide the clarity of a question or of the results when it is quite conceivable that a government of the combined opposition could have a say in this issue?

**Senator Murray:** I did not really address the bill in any detail because that had been so well done by so many speakers. I wanted to say a few words about the political climate in the country because it concerns me so much.

With regard to the specific question that my friend has asked, when I saw that the government would rely, under the circumstances of a referendum, completely on the views of the House of Commons and cut the Senate out, I thought this to be extraordinarily foolish and short-sighted. There are circumstances such as Senator Gauthier has just alluded to in which a federalist government over there might thank God for the existence of a Senate in a situation in which the combined opposition took a position antithetical to the Canada in which those of us in this chamber believe. We might, to use Mr. Trudeau's classic phrase, provide the effective counterweight. It is very foolish of them to cut the Senate out the way they have done.

• (1530)

**The Hon. the Speaker:** Honourable senators, pursuant to the order of your honourable house, I declare the Senate continued until Thursday —

**Senator Hays:** Honourable senators, I wonder if I could ask for leave to make a proposal.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Hays:** I wonder, honourable senators, if I might ask and hopefully receive leave to not see the clock for approximately five minutes on the following basis.

First, I propose that we not proceed with the order of the Senate so that Senator Murray can complete his answer and deal with any other questions in the balance of his half-hour time frame. Second, I propose that we then call Order No. 4 under Government Business, namely, resuming second reading debate on Bill C-22, so that we might hear a speech by Senator Kelleher, which is very short and which may be the last speech at the second reading stage of this bill.

**The Hon. the Speaker:** Is leave granted, honourable senators, that I do not proceed with the order of the Senate and that we resume debate on Bill C-22?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, it is understood that committees will hold in abeyance the commencement of their meetings until the Senate rises.

Debate suspended.

## PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

### SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Kroft, seconded by the Honourable Senator Bacon, for the second reading of Bill C-22, to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence.

**Hon. James F. Kelleher:** Honourable senators, I am pleased to rise today to speak on second reading of Bill C-22, a bill which, when passed, will create a new Proceeds of Crime Act.

As Senator Kroft mentioned yesterday, money laundering is a serious issue in Canada and has been for some time. It is estimated that between \$5 and \$17 billion pass in and through this country illegally every year.

Bill C-22 builds upon the existing Proceeds of Crime Act and attempts to address recommendations made by the Financial Action Task Force on Money Laundering, a task force created by G-7 leaders in 1989. Unfortunately, Canada is one of the last countries in the industrialized world to take the necessary steps to meet the minimum standards set by the Financial Action Task Force.

Bill C-22 proposes to bolster Canada's anti-money laundering efforts by requiring banks, trust companies and a host of other financial intermediaries to report information about the financial transactions of their clients and customers. Bill C-22 will also establish, in association with the Canada Customs and Review Agency, a system of reporting large cross-border transactions.

The details about these financial transactions are to be collected by a new central data gathering and analysis body known as the Financial Transactions and Reports Analysis Centre of Canada. This new centre will analyze and assess reports, together with other information available to it, and provide leads to law enforcement agencies.

As a former solicitor general of Canada, I find it odd that the new centre will report to the Minister of Finance. It seems more appropriate that an agency that will be involved with law enforcement would report to a minister with some expertise in the area, such as the Office of the Solicitor General. Nonetheless, I am pleased to report that the Progressive Conservative Party of Canada supports the broad purposes and aims of this bill; that is, the prevention and reduction of money laundering in Canada.

I must also tell honourable senators, however, that several aspects of this proposed legislation give us cause for concern. We note, for example, that at a time when there is an ongoing need for government to show fiscal restraint, this government is proposing to create yet another new agency. Moreover, the government has not made clear exactly what its new centre will cost. We understand that our colleagues in the other place were told that the centre would cost approximately \$10 million to operate annually. We in this chamber are hearing that the real cost is, in fact, closer to \$15 million. Quite frankly, this is unacceptable. We cannot, as parliamentarians, give our stamp of approval to this or to any other piece of legislation without knowing exactly how much taxpayers' money the government proposes to spend.

We are also concerned that the bill does not clearly define the types of financial transactions it will require banks and other financial intermediaries to report. The definitions provided are unclear and much of the necessary clarification is being left to the regulations. Without clear definitions, the dangers exist that financial intermediaries may neglect to report transactions that should be reported. Conversely — and I am not sure which is worse — they will over-report and thereby provide the new centre with an overflow of data about the financial transactions of innocent Canadians. This leads me to our next concern.

Perhaps the most troubling aspect of this bill is whether it adequately protects the privacy rights of Canadians. Canadians are legitimately concerned by the government's continuous collection and sharing of their personal information. Just yesterday, the Privacy Commissioner released his annual report and indicated that the government now has a file on almost every single Canadian, with files containing as many as 2,000 pieces of information. The power this new centre will have to collect and disseminate personal information, information it can store for up to eight years, will only exacerbate Canadians' concerns.

The Privacy Commissioner's report also states that the new centre could, in addition to information pertaining to an individual's criminal history, amass information relating to an individual's employment, financial transactions and travel history, as well as information relating to an individual's income status, business or professional relations, and possibly even personal relations.

While Bill C-22 stipulates that information collected by the centre can only be disclosed under limited circumstances, in reality we may never be certain if the information gathered about our financial transactions is being improperly disclosed. We do know that the new centre will be monitoring our transactions.

What we do not know is who will be monitoring the monitor. The Office of the Privacy Commissioner simply does not have the necessary resources to conduct an annual audit of this and every other government department and agency.

Our party wishes to ensure that the provisions of this bill do not result in the personal information of Canadians being indiscriminately disclosed. Given our concerns, we will also be giving careful consideration to the need for a strict review of the new legislation every five years.

Finally, honourable senators, let me repeat that we support the government's attempts, albeit tardy, to bring Canada's money-laundering legislation into line with the rest of the industrialized world. However, we also look forward to an opportunity to conduct a detailed examination of this bill when it is referred to committee.

**Hon. Anne C. Cools:** Honourable senators, I should like to note for the record that something extremely unusual happened a few minutes ago, and I hope that it will not form a precedent at any point in time.

My understanding is that the Speaker of the Senate was under an order of the Senate to interrupt whatever may be happening at 3:30 p.m. to end the proceeding. It is my opinion that such an order of the Senate, made yesterday, cannot be overcome by a senator simply standing to ask for consent not to see the clock.

• (1540)

I do not propose that we can resolve this question here because the order that the Senate should end its business at 3:30 is still running and is still functioning. I would propose that we say here and now that this is not a precedent, and then we can look at the question with a bit more seriousness at another time.

Orders of the Senate simply should not be overcome that easily. If we can overcome an order today, then we can overcome an order tomorrow and next week. Why only on this particular question? Can we overcome orders for the Speaker to rise and put a vote and to set the bells in motion?

Honourable senators, we have a duty to respect the orders that we have given to His Honour if we expect His Honour to honour those orders.

I wanted to make the point that this procedure should not be taken as a precedent. Perhaps, in more leisurely circumstances we can discuss it without going through the troublesome questions. Even to speak now is, in a way, defying the order that is currently before the Senate.

**The Hon. the Speaker:** I thank the Honourable Senator Cools for her comments. I recognize that she is raising an important point.

**Senator Cools:** We have a duty to you, Your Honour, not to put you in such a position. You are under an order to interrupt at 3:30 and it is now 3:40.



**The Hon. the Speaker:** Honourable senators, the practice of the Senate is that, by leave, the Senate can do whatever it wishes. I admit that this matter should perhaps be examined by the Rules Committee because it is very broad. I suppose every rule could be changed.

Leave was granted for the suspension of the order. I heard honourable senators say yes, that leave was granted; therefore, I had no alternative.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I believe that, to complete Order No. 4, we should deal with the question.

**The Hon. the Speaker:** Are there other honourable senators who wish to speak to Bill C-22?

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I wish to speak to this unusual violation of the house order, by leave or not. We criticize committees for wanting to sit during our sitting hours. They were all ready to sit at 3:30, thinking the house would adjourn. Now they are waiting until 4:00 so the membership can get to their respective committee rooms.

Honourable senators, we should be consistent. The house order can, by procedure, be suspended by leave, but I think it is wrong to do so. Will the government perhaps tomorrow decide they do not have enough members for the vote scheduled at 3:00 p.m. and ask for leave to suspend the vote? There must be a limit. Leave is used for ordinary measures and hopefully not for extraordinary measures such as a house order.

**Senator Cools:** Leave can be given to do many things, but one thing it cannot do is overturn an existing order.

**Senator Hays:** Honourable senators, I think I had better speak to this matter. Whether it is a precedent or not, we have used leave in the past to suspend a rule, as we are now, in order to continue a sitting even though we had a house order to rise at a certain time. The way to prevent that from happening is not to

grant leave. In other words, we can say no when leave is requested.

**Senator Lynch-Staunton:** Or you could decide not to ask for it.

**Senator Hays:** I do not think I should say more than that.

Today, I would hope that we could complete deliberation on Order No. 4 by dealing with the question. As I understood the request that I put to the chamber, the clock would be seen following the question and the sitting would end. Then our committee sittings could proceed and we could hear everyone's concerns.

In the future, I will be sensitive to requesting leave under the circumstances that we have just seen.

**The Hon. the Speaker:** If no other honourable senator wishes to speak, I will proceed with the question.

It was moved by the Honourable Senator Kroft, seconded by the Honourable Senator Bacon, that Bill C-22 be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

**The Hon. the Speaker:** Honourable senators, the item for which leave was granted has now been completed.

The Senate adjourned until Thursday, May 18, 2000, at 1:30 p.m.

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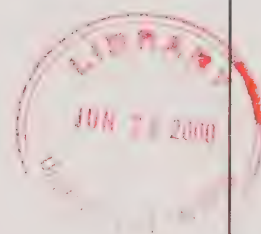
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OFFICIAL REPORT  
(HANSARD)

Thursday, May 18, 2000

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THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER



## CONTENTS

(Daily index of proceedings appears at back of this issue.)

## OFFICIAL REPORT

### CORRECTIONS

**Hon. Anne C. Cools:** Honourable senators, I was just reviewing the *Debates of the Senate* for Tuesday, May 16, 2000, wherein there is an error in one of my speeches. It is an important error. I want to put the correction on the record.

In my speech on May 16, 2000, as reported at page 1391 of the *Debates of the Senate*, an error has occurred. In the text of my speech, in the second paragraph, I made reference to Professor Peter Hogg. I quoted Professor Hogg directly saying two words only. Those two words were "loosey-goosey." Those were the only two words which should have had quotation marks around them. Somehow or other, in the process of record keeping, it reads as though I cited a substantial quotation which I attributed to Peter Hogg.

I ask that the record be corrected to show that the two words "loosey-goosey" be in quotation marks, and that the remainder of that text be taken out of quotation marks.

I should like to say that our Hansard reporters and translators do a marvellous job. However, every now and again, there is a little mishap. I thank them for their work. They are quite attentive.

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## THE SENATE

Thursday, May 18, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### SENATORS' STATEMENTS

#### THE SENATE

##### MANDATORY RETIREMENT

**Hon. William M. Kelly:** Honourable senators, last evening the Speaker had a very nice gathering to allow three departing senators to say their farewells. It is part of the tradition here. I want to explain why I was not present. I was one of the three senators. I had been requesting an opportunity to meet with the Minister of Defence on a matter that was important to me, and he had granted me his audience yesterday between 4:30 and 5:00 p.m. Therefore, I was not able to attend the gathering last night.

I must say a few things. I am not totally prepared at this point to say "goodbye." The fact is that the requirement that we leave at a certain age is a blatant example of age discrimination. I am quite serious. I intend to do two things. I intend to file a complaint with the Human Rights Commission, and furthermore, I shall be asking for an injunction against this seat being filled by any new senator until my case is heard.

I was reminded of how mammoth this problem will become when I saw Senator Stanbury up in the gallery on Tuesday. I thought of Senator MacEachen and all the others who are sound in mind and body, totally capable of carrying on their senatorial duties. I, like the ones with whom I have spoken on this issue, would be quite prepared to have my mind and my body checked on a six-month basis. I think it is time we rallied around and took care of the situation, because it is absolutely unacceptable.

#### WORLD WAR II

##### FIFTY-FIFTH ANNIVERSARY OF VE DAY

**Hon. Raymond J. Perrault:** Honourable senators, particularly in the past century, Canadians of many ages, thousands as young as 19 and some as young as 16 or 17, served with distinction on the battlefields and in the war zones of the world. They were Canadians of many racial descents, of many religions and philosophies. They came from every one of our nation's provinces and territories. They served with uncommon valour on land, on the seas, and in the air.

In World War II, our merchant mariners kept vital supply lines open, earning high praise from Winston Churchill, who said that the war could not have been won if the Battle of the Atlantic, with its large Canadian component, had been lost. Thousands from all of the services never returned.

Many of these gallant Canadians are buried together with their comrades in the incredibly beautiful Commonwealth War Graves Commission cemeteries. The names and the resting places of thousands are known only to God. The bodies of some have never been found.

The week of May 1 to 11 marked an important observance for the people of Holland and for Canadians, especially for our gallant and courageous war veterans. This week marked the fifty-fifth anniversary of the liberation of the Netherlands. As honourable senators are aware, Canadian forces played a very prominent role in the liberation of Holland.

In Northern Europe, thousands died and were buried in cemeteries in Holland, Belgium and a few in Germany. Crowds of people attended the events of that memorable week, events which included march pasts, parades, tattoos, entertainment evenings, and the unveiling of statues.

The Veteran Affairs Canada delegation visited many of the cemeteries and such major locations as Apeldoorn. There was a wreath laying at the Liberation Forest Monument. Later, in the presence of Her Royal Highness Princess Margriet, we visited Holten and its 1,355 Canadian war cemetery graves. There was a ceremony and wreath laying at Osterbeek War Cemetery. There was a memorable visit to Utrecht, where 2,338 Canadians are resting, and a visit to the 2,338 Canadians at Groesbeek Canadian War Cemetery.

There was a ceremony and wreath laying at Bergen-Op-Zoom War Cemetery, and then on to Germany where there were ceremonies and wreath-laying at Reichswald War Cemetery and the Rheinberg War Cemetery where several Canadian flyers who died on German soil are resting. Last but not least, there was the burial of a Canadian member of the forces whose body was found only a short while ago. He has been interred with honours and many Canadians were at the interment. He has no name. In real sense, he is the unknown soldier of the fifty-fifth liberation observances in Holland.

• (1340)

Honourable senators, there were parades, cultural events, receptions, and dinners. The streets were crowded with grateful Dutch citizens. Dutch hospitality was absolutely outstanding, and the Dutch expressed their gratitude for the Canadian sacrifices in Holland so many years ago.



Significantly, the children of Holland played a prominent role in all of the public events. Canadian graves were decorated by young Dutch girls and boys, who festooned them with small Canadian flags, while compositions written by other Dutch youngsters were featured along with poems written for the occasion.

I asked one of our hosts about the prominent role of children in these liberation anniversary observances. He said: "Canadians — many of them very young — gave us our liberation in that terrible war fought so many years ago. We shall never forget." He continued: "We believe it to be important that our young of today know what happened in those terrible war years and the cost of freedom. We want our young people never to forget who gave us our freedom, and the many Canadians who died for us and who paid the price with their lives."

In conclusion, honourable senators, this man also said, "We remind our young people that many of these young Canadians were virtually the same ages as today's generation of our Dutch young people. These fallen Canadians had the potential to do great things in this world. War denied them long, productive lives." As our Dutch host said, "We shall never, never forget them."

Honourable senators, it was a marvellous and emotional week — a week never to be forgotten. It was a week which emphasized the special relationship between Holland and Canada, which is a relationship that will exist forever. It was a week in which one hopes there will never be another war, and that blood sacrifices such as the First World War and the Second World War will never occur again.

### OFFICIAL CODE OF CONDUCT FOR PARLIAMENTARIANS

**Hon. Donald H. Oliver:** Honourable senators, it is time that the Parliament of Canada had an official code of conduct for parliamentarians. The purpose of such a code is to assist in reconciling official responsibilities with senators' personal interests. A code of conduct would help to avoid even a potential conflict of interest.

Since being summoned to the Senate some 10 years ago, I have stood in this place on eight occasions to strongly urge honourable senators to adopt such a code. As you know, I was co-chair of the Special Joint Committee on a Code of Conduct with Peter Milliken, MP, and we tabled a report in March of 1997. Since that time, nothing has happened. The report was not adopted in either the House of Commons or the Senate.

Honourable senators, there has, of course, been other work done in recent years and there are several existing provisions regarding conflict of interest and code concerns for parliamentarians. These rules are not consolidated in a single statute, but they are found in the Parliament of Canada Act, the Criminal Code, the *Rules of the Senate*, the Standing Orders of the House of Commons, Conflict of Interest and Post-employment Code for Public Office Holders, as well as other laws. Many of these provisions are rather antiquated and

deal only with specific situations. It is generally recognized by most concerned Canadians that a more up-to-date and relevant set of rules is required, both to guide politicians and to assure the Canadian public that high standards of conduct apply to all of our dealings.

This week I was reminded again that we do not have any code when I received the fifth report of the Committee of Standards in Public Life, chaired by Lord Neil of Bladenm, Q.C., called "Reinforcing Standards." It is a review of the first report of the Committee on Standards in Public Life in the United Kingdom. That committee was set up in October 1994 by the Right Honourable John Major, against a backdrop of public disquiet about standards in public life. At that time there were three major problems in the U.K.: the cash for question scandal; allegations that former ministers were obtaining employment with firms with which they had connections while in office; and a perception that appointments to public bodies were being unduly influenced by political party considerations.

Honourable senators, it is my view that politicians should be insulated from any such allegations, and that one way to start to build up that kind of respect is to adopt a set of official principles and a code of conduct that provide the transparencies and accountability to which the public is entitled. After all, service to Parliament is a public trust. We should adopt a code of official conduct to reassure the public that all parliamentarians are held to standards that place the public interest ahead of parliamentarians' private interests, and to provide a transparent system by which the public may judge this to be the case.

## ROUTINE PROCEEDINGS

### PROCEEDS OF CRIME (MONEY LAUNDERING) BILL

MOTION TO WITHDRAW FROM LEGAL AND CONSTITUTIONAL  
AFFAIRS COMMITTEE AND REFER TO BANKING, TRADE  
AND COMMERCE COMMITTEE ADOPTED

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, with leave of the Senate, notwithstanding rule 58(1)(f), I move:

That Bill C-22, an act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain acts in consequence, which was referred to the Standing Senate Committee on Legal and Constitutional Affairs, be withdrawn from the said Committee and referred to the Standing Senate Committee on Banking, Trade and Commerce.

**The Hon. the Speaker:** Is leave granted?

**Hon. Senators:** Agreed.

Motion agreed to.

[Later]

## COMPETITION ACT

### BILL TO AMEND—FIRST READING

The **Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-276, to amend the Competition Act (negative option marketing).

Bill read first time.

The **Hon. the Speaker**: Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading Monday, May 22, 2000.

## QUESTION PERIOD

### HUMAN RESOURCES DEVELOPMENT

#### PRIVACY COMMISSIONER'S REPORT—DATA BANK ON DETAILS OF PRIVATE CITIZENS—SAFEGUARDS BY GOVERNMENT

**Hon. Roch Bolduc**: Honourable senators, in his last report the privacy commissioner wrote a chapter on HRDC's Longitudinal Labour Force File. The Privacy Commissioner tells us that this database contains records of more than 33.7 million individuals. We are now being told by HRDC that keeping 2,000 data elements on each of us is for the purpose of sound manpower policy formulation against unemployment, and for training program purposes, et cetera. The training aspect has been, I believe, transferred to the provinces, or some provinces at least.

Unemployment statistics released this morning gave us some figures up to the end of 1999. They show that 6.3 million people work in large firms employing more than 300 people and small- and medium-sized enterprises employing from 50 to 300 people, and 5.5 million people work in small businesses of less than 50 employees. There were 800,000 self-employed workers, and 1.5 million unemployed.

• (1350)

Therefore, of 14.1 million people — half of all Canadians — 10 per cent are unemployed. Yet, we keep files on 35 million people, including 90 per cent of the people who have no concern about unemployment, including all of us here.

We need information on 5 per cent of the total Canadian population, yet we build a virtual behemoth on 35 million people, 5 million more Canadians than there are living, and it is operated by 25,000 employees. That is a bureaucratic "dérapage" of the highest order.

Will the minister commit himself to entering into an agreement with Quebec, British Columbia, Ontario and Alberta to stop this Kafkaesque nonsense?

**Hon. J. Bernard Boudreau (Leader of the Government)**: Honourable senators, I thank the honourable senator for raising

this question again today. The file at HRDC, to which he and the Privacy Commissioner referred, goes by the rather long name of Longitudinal Labour Force File. It was created for the purpose of conducting research and evaluation on Canada's social programs and the impact of specific pieces of legislation that have been in place for a considerable period of time. The file also assists in the design of government measures legislation that may be contemplated.

The minister responsible for HRDC and the Minister of Justice have indicated publicly, consistent with my own comments, that as the Privacy Act faces challenges in today's society that simply did not exist five or ten years ago. For this reason, it does warrant a review. Some changes have already been instituted by HRDC and more are contemplated. I believe the Privacy Commissioner confirmed that everything is legal. In fact, he did not request that such practices cease, just that we must now respond to the increased challenges to maintaining privacy presented by new technology.

I am confident that the minister responsible for HRDC is responding in an appropriate way. I am also pleased that the Minister of Justice indicated publicly that it may be time to review the provisions of the Privacy Act.

[Translation]

**Senator Bolduc**: Honourable senators, the government does not want to put a stop to the transfer of data from the Department of National Revenue to the Department of Human Resources Development. I have always assumed that our tax returns were confidential. Now, information is going to be sent from one department to another. This is not acceptable. Since 1917, we have always understood that tax returns remained within a department. We can understand and accept the fact that data is shared between the two departments, between one government and another. There are 25,000 employees at Revenue Canada. The minister said yesterday that only six employees have access to this information.

In my opinion, we must urge the Minister of Justice to prevent data from Revenue Canada being released to other departments. We must make sure that tax returns are confidential. This is the least we can ask.

[English]

**Senator Boudreau**: Honourable senators, I shall certainly convey the views raised by the honourable senator to colleagues in cabinet, including the Minister of Justice, who has indicated willingness to review the privacy legislation.

I wish to reiterate that provisions are in place to encrypt information transferred to HRDC. The minister also indicated publicly that there are only six people in the department who have the capacity to access such information. I think that people are generally in agreement that programs and legislation which were designed using that information are operating effectively and that the use of that information in the design of legislation and programs is legitimate.

I shall certainly pass the views of the honourable senator along to my colleagues.



USE OF SOCIAL INSURANCE NUMBERS  
IN DATA GATHERING ON PRIVATE CITIZENS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):**

Honourable senators, when the social insurance number was introduced, many reassurances were given that only very restricted use would be made of it. Given that modern technology has since arrived on the scene, will the government undertake an inquiry into the commitment that was made about the use of the social insurance number and the misuse of it which is so obvious across Canada? That misuse, tied to modern data technology, infinitely multiplies the problem with which we are now faced.

**Hon. J. Bernard Boudreau (Leader of the Government):**

Honourable senators, the Honourable Senator Kinsella has clearly pointed out the expanding challenge of technology in the modern world. It involves social insurance numbers, credit card numbers, and so on. That information is often freely given by individuals but, once given, is sometimes used for purposes which the individual may not have intended or even contemplated.

I agree with the minister and the honourable senator that this may be an appropriate time to step back and look at where we are now, in the year 2000. Perhaps we must examine the capability of all this new technology and determine how it has impacted on the need for provisions respecting privacy. It may be time to update our existing practices and legislation.

I shall convey the senator's concerns to the Minister of Justice.

NATIONAL DEFENCE

REPLACEMENT OF SEA KING HELICOPTERS—  
POSSIBLE PURCHASE FROM COMPANY IN FRANCE

**Hon. J. Michael Forrestall:** Honourable senators, I have a question for my returning hero. We were able to confirm that his predecessor rose to the rank of Acting Chief Petty Officer. Does the Leader of the Government care to try for one himself?

We have been told by most reliable sources that during the Prime Minister's visit to France in June he will be discussing with French government officials and members of Aerospatiale and Daimler Chrysler a proposed contract directed to Eurocopter to replace the aging Sea King fleet.

• (1400)

My concern, Mr. Minister, is that the Canadian Forces have the proper equipment to do their job, not the cheapest available, not a piece of equipment that was rejected in the last go-round based on 20-plus-year-old technology. I am somewhat concerned about that.

My question to the Leader of the Government in the Senate is this: Is the government planning a directed buy from France for the Eurocopter Cougar Mk 2 to replace the Sea King?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for raising

the issue of my recent flight. I am pleased to have this opportunity to share the experience with some honourable senators at least in this chamber, if not in the helicopter.

I had the opportunity to take an operational flight where we rendezvoused at sea with HMCS *St. John's* which was on active duty. We were removing a sailor from that vessel and then subsequently performed routine anti-submarine manoeuvres and a simulated search and rescue mission, returning safely and without incident approximately two and one-half hours after takeoff.

I was exceptionally impressed by the professionalism of the crew and how well they were able to perform with the equipment. The senator would probably share my views on that point. Everything they were able to do was done with great professionalism. I was pleased to have had an opportunity to see the equipment at work and to get a better appreciation of what they do. I also appreciated the opportunity to speak to a crew that operates the equipment on a daily basis.

**Senator Forrestall:** Where is the flight log?

**Senator Boudreau:** As to the other question of the honourable senator, I have no knowledge. Thus, I can neither confirm nor deny the information that the honourable senator raises today. I shall certainly forward the question along and provide a response in due course. I cannot comment on it one way or another.

REPLACEMENT OF SEA KING HELICOPTERS—  
OPENNESS OF PROCUREMENT PROCESS

**Hon. J. Michael Forrestall:** Honourable senators, we all know that the minister does not particularly want to swallow his pride and buy the EH-101, after the embarrassing near \$1-billion cancellation cost. It seems that the Cougar Mk 2 may come with a promise of a Chrysler plant or two and a French government promise to keep its nose out of a Quebec referendum, when it comes.

Even though the Cougar employs 20-plus-year-old technology, is top heavy and is not a proven maritime helicopter, to my knowledge, it is operated only in a limited way by the French navy and the Chilean navy.

Can the minister assure the house that the competition to replace the Sea King will be fair, open and in accordance with the approved statement of operational requirements?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I cannot comment specifically on some of the preamble to the honourable senator's question, except to say that part of it stretches credibility somewhat to believe that such factors would be involved.

As the honourable senator has told me on a number of occasions — and I have spoken to others about this point — if an order were to go out tomorrow to replace all of the Sea Kings, it would take some time for the new aircraft to arrive on the scene and to be put into active duty. In fact, how long it would take from one point to the other depends in some instances on the type of procurement process that would be followed.

**Senator Forrestall:** That is what I am talking about.

**Senator Boudreau:** There are various options available. I have no information that anything other than the normal procurement practices are being contemplated. I shall certainly inquire and bring the senator whatever information I can.

**Senator Forrestall:** Honourable senators, I, for one, do not consider buying a next-to-useless piece of equipment off the shelf to be part of a normal procurement process. We are talking about buying a piece of equipment that has to last 20 or 30 years. We are not talking about buying a piece of 20-year-old technology. Members of the Canadian Armed Forces deserve a little bit better. I ask the minister to understand that if we have to wait for five years, make damn sure that the members of the Armed Forces are the beneficiaries of a proper process and that they get the type of equipment that they want and need, equipment that they have told us for the last 10 to 15 years they need.

Will the minister carry the concern that I have expressed today to his cabinet colleagues, including the Prime Minister, and come back to this chamber with some kind of a response as to whether or not anyone in government is contemplating an order off the shelf of the Eurocopter Cougar Mk 2?

**Senator Boudreau:** Honourable senators, I shall make the inquiries, as I have indicated. The answer I bring back will depend, obviously, on the individuals who are questioned. I have always believed that the aircraft that will be chosen at some point will certainly not be chosen without the recommendation of military experts and military personnel.

Not being an expert myself on various potential candidates for the replacement helicopter, I would be inclined to rely on those experts who will give us that advice.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, are the same experts the minister will be relying on today the same ones who recommended the purchase of the EH-101 some 10 years ago?

**Senator Boudreau:** Honourable senators, not being around 10 years ago in this capacity, I have no idea who the experts were at that stage. Whatever replacement helicopter might be chosen, it will be one that has been reviewed and approved by current military experts.

**Senator Lynch-Staunton:** That does not answer the question. They are still there waiting, as you well know.

## THE SENATE

### PROPOSAL TO INSTITUTE GOVERNMENT RESPONSES TO PETITIONS

**Hon. Eymard G. Corbin:** Honourable senators, my question is to the Leader of the Government in the Senate. Senator Forrestall just a moment ago spoke of relating our concerns to cabinet and whoever makes decisions.

I found out recently that there is a practice in the other place of the government laying on the Table its responses to petitions. We do not have that practice here in the Senate. I refer to petitions of

the type presented by Senator Milne, for example, regarding genealogical research and census records. We sometimes wonder if those petitions are going anywhere, if they are getting the attention they deserve or, indeed, if anyone beyond those sitting at the Table are listening. As to what happens to them, we have no idea. Indeed, I wonder if the petitioners themselves sometimes have the feeling that they are petitioning in the wind because we never see any concrete results.

Would the Leader of the Government in the Senate be supportive of a change to the *Rules of the Senate* or a commitment on the part of the government to table substantial responses to petitions presented in this house by senators on behalf of Canadians?

• (1410)

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I thank the honourable senator for raising that particular issue. I appreciate his experience in the practices of the other place particularly. It sounds to me like a sensible idea and one that I shall pursue.

## DELAYED ANSWER TO ORAL QUESTION

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I have a response to a question raised in the Senate on May 4, 2000, by Senator Meighen, regarding the possibility of suspension of the anthrax vaccination program.

## NATIONAL DEFENCE

### POSSIBILITY OF SUSPENSION OF ANTHRAX VACCINATION PROGRAM

(Response to question raised by Hon. Michael A. Meighen on May 4, 2000)

HMCS *Calgary* is not scheduled to depart Canada until June and is expected to begin patrols in July. The Canadian Forces carefully monitors and assesses levels of risk and will take the steps necessary to protect its personnel.

The anthrax vaccine starts to provide protection from this very deadly disease from the first inoculation. Protective antibodies develop in 85 per cent of individuals after one dose and in up to 95 per cent of individuals after three doses. To provide further protection, Canadian Force members would receive antibiotics until they have taken the third dose.

The U.S. Food and Drug Agency issues a license for vaccine only if it meets their rigorous standards which are among the highest in the world. The license has been in effect since 1970 and has never been revoked. The FDA has publicly endorsed the safety and effectiveness of the Biopoint anthrax vaccine. However, given that the second question pertains to the safety of the vaccine — a matter that has been the focus of a recent court martial decision that may be appealed — it would be inappropriate to comment further on the matter.



**ANSWER TO ORDER PAPER QUESTION TABLED**

FOREIGN AFFAIRS—HUMAN RIGHTS IN CHINA—  
GOVERNMENT POSITION

**Hon. Dan Hays (Deputy Leader of the Government):** tabled the answer to Questions No. 11 on the Order Paper—by Senator Kinsella.

[Later]

**VISITOR IN THE GALLERY**

**The Hon. the Speaker:** Honourable senators, I should like to call your attention to a very distinguished visitor in our gallery, His Royal Highness Prince El Hassan bin Talal of the Kingdom of Jordan.

Your Royal Highness, on behalf of all the honourable senators, I wish you welcome here to the Senate Canada.

**ORDERS OF THE DAY****CANADA ELECTIONS BILL**

MOTION FOR ALLOTMENT  
OF TIME FOR DEBATE ADOPTED

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, in the past, at the beginning of "Government Business," I have taken advantage of my opportunity, pursuant to rule 38, to comment on the status of negotiations between myself and the Deputy Leader of the Opposition.

I am sure Senator Kinsella will comment, but I rise now to indicate that we have an agreement on a voting time for Bill C-2.

Accordingly, pursuant to rule 38, I move:

That, in relation to Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts, no later than 5:00 p.m. Wednesday, May 31, 2000, any proceedings before the Senate shall be interrupted and all questions necessary to dispose of third reading of the Bill shall be put forthwith without further debate or amendment, and that any votes on any of those questions be not further deferred; and

That, if a standing vote is requested, the bells to call in the Senators be sounded for thirty minutes, so that the vote takes place at 5:30 p.m.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators —

**The Hon. the Speaker:** Honourable Senator Kinsella, I remind you that such motions are to be put without amendment or debate. However, leave can be given for comments.

**Senator Hays:** I should ask for that leave, honourable senators.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Kinsella:** Thank you, honourable senators. I concur with the statement of the Deputy Leader of the Government with reference to my position. Senator Hays has correctly outlined the pith and substance of our discussions, and we shall vote on May 31.

**Hon. Anne C. Cools:** Honourable senators —

**The Hon. the Speaker:** Honourable Senator Cools, is this on a point of order?

**Senator Cools:** Honourable senators, you could say it is a point order. I just want to be sure that when we adopt this motion we are adopting the position that the vote will be held at a particular time, that we are crystal clear that the order of the Senate in respect of time will be totally honoured, and that we shall never again see in this Senate chamber a repetition of what I consider to be an error that was made yesterday, where, by leave, honourable senators agreed not to see the clock with regard to an order of the Senate. Not seeing the clock usually applies in respect of the rule about terminating sittings at six o'clock. An order of this chamber simply cannot be overturned by giving leave with unanimous consent. I am reiterating the point that I made yesterday. In other words, if His Honour has before him an order of this chamber which orders him to see the clock and to call for the bells at a particular time, that motion simply cannot be overturned or altered by leave of the Senate to not see the clock.

**The Hon. the Speaker:** Honourable Senator Cools, I thank you for your comments. This, however, is not within my power to do. I am sure you have been heard.

I want to remind all honourable senators that, when leave is requested, any one single senator can rise or simply say No, and then leave is not granted.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

**BUSINESS OF THE SENATE**

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, under "Government Business," I should like to call Order No. 2, resuming debate on Bill C-20, as the first order of business. It is my understanding that we were at the point of suspending debate at the end of Senator Murray's time.

**BILL TO GIVE EFFECT TO THE REQUIREMENT FOR  
CLARITY AS SET OUT IN THE OPINION OF THE  
SUPREME COURT OF CANADA IN THE QUEBEC  
SECESSION REFERENCE**

SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference,

And on the motion in amendment of the Honourable Senator Stratton, seconded by the Honourable Senator Lynch-Staunton, that the motion be amended by deleting all the words after the word "That" and substituting the following therefor:

"Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference, be not now read a second time but that the Order be discharged, the Bill withdrawn and the subject-matter thereof referred to the Standing Senate Committee on Legal and Constitutional Affairs."

**Hon. Lowell Murray:** Honourable senators, I had concluded my remarks and had replied to several questions. I do not think there were any further questions when we adjourned yesterday.

**Hon. Anne C. Cools:** Would Honourable Senator Murray take a question from me?

**Senator Murray:** Certainly.

**Senator Cools:** There has been a fair amount of talk in this chamber about supporting the idea of the bill and supporting the concept of the need for clarity. There is also a lot of concern in this chamber that some of the attempts to bring clarity may be, in point of fact, bringing greater obscurity.

It was my understanding that there was no legal possibility for secession. As a matter of fact, it was always my understanding that, until very recently, even the term "secession" was not a legitimate term in the lexicon of Parliament or in the lexicon of politics in this country. If you will remember, until quite recently, the language was "sovereignty," and, before that, it had been "sovereignty association."

• (1420)

My question to the honourable senator is this: To the extent that Bill C-20 creates a legal ability or a legal obligation on the government to negotiate secession, and in view of the fact that Bill C-20 is apparently creating law, for the first time, under which secession may take place, am I right to conclude that, in so doing, Bill C-20 makes secession not only possible but legitimate, and, therefore, indirectly tells Quebecers that voting in a referendum for secession is a proper and legal option for them?

**Senator Murray:** The short answer to the question, in my opinion, is that, yes, it does legitimize the secessionist option. Most of the other points that my friend has referred to have been thoroughly canvassed in several of the speeches that have been made in this debate and by people who have obviously researched them in considerable detail.

As for the question of clarity, that is a laudable objective. Whether or not this bill achieves clarity is a matter which I, and my colleagues on this side, would want to explore in considerable detail with Minister Dion if this bill passes second reading and goes to committee. Of course, if it does not, then that question and all other questions are moot.

**Hon. P. Michael Pitfield:** Honourable senators, I welcome this opportunity to comment briefly on Bill C-20. It is a truly extraordinary and remarkable piece of legislation — not because of its form or its drafting but, rather, because it expresses an idea. In doing so, it has won quite a following.

In terms of expenditure, the bill does virtually nothing. It issues no great demands. It assumes no great undertakings. It makes very few commands. It simply says what the federal government should do in the event of certain kinds of provincial referenda and their consequences. That is it. In terms of federal interference with the rights of the citizens or the powers of the provinces, it leaves little ground for complaint.

The bill has had a considerable impact in both English- and French-speaking Canada. English-speaking and French-speaking Canadians have been given to understand that the legislation has been generally regarded as prudent and farsighted — a response by a government to a danger that it is not to be unprepared for.

All governments are becoming more concerned with questions of expenditure than they used to, and that distinguishes the legislation in a major way.

This legislation is of a kind that we are seeing more and more these days. It is legislation that is concerned with the realization of objectives. It is legislation that is used to publicize party positions. It is not legislation in the sense that we used to think legislation ought to be, namely, laws that govern, laws that regulate and laws that are laws. It is legislation that calls upon people in ways that are new to them.

In the course of dealing with the issue, this approach has a great many hidden costs. It is very destructive, for example, to systems of accountability. It does the same things to systems of personnel management and systems of administration that it does to the traditional concept of public administration. I mention this not to criticize but, rather, to set the background. The costs of this kind of initiative must be included when one makes an assessment of whether or not it adds significantly to the role of Parliament. The costs must be determined in the context of the offsetting concerns for corresponding objectives and decision-making systems and decision-making.



Honourable senators, all of this explains why I am drawn to support the bill. It is the sort of management of techniques about which civil servants and nerds like to opine.

• (1430)

The next time anybody prepares a speech for me that has the text on both sides of the page, I shall personally have them hung out to dry. On top of that, I shall send anyone here who dares complain, to the optician to have drops put in his eyes 20 minutes before he speaks. He may then make a decision about distance.

Seriously, though, taking on the responsibility for defending some of these technocratic ideas perhaps explains why I support the central theme of this legislation. I congratulate the Prime Minister for the skill with which he has brought along his colleagues and those in other levels of government whose support is required to have this sort of bill enacted.

The bill is, indeed, a prudent measure and has already contributed, in manifold ways, to significantly clearer thinking, but clarification is a two-way street, if not for the professor, at least for the pupil. I confess that, at least for this pupil, while Bill C-20 generally seems to encourage clarification, it nonetheless leaves a scum of disappointment with regard to a few matters.

There is much to be said for what the bill does in terms of the role of the Senate, for example. In that regard, it has long been hinted in some quarters that one or another of the ministers and their aids are strong supporters of the abolition of the Senate. There is nothing wrong with that. People's views on the Senate vary greatly. There is lots of room for discussion. It is great that we should come to grips with it but, still, Bill C-20 comes perilously close to changing what I would say is the general consensus of members with regard to the Upper House, namely, that the question is best not tackled in detail outside of the context of general reform of the Constitution.

I do not imagine there is a formula in the books more frequently stated than the one that goes something along the lines of: "the Queen, on the advice of the Senate and the House of Commons..." et cetera. However, along comes this bill and all of that is implicitly dismissed, and we are not three but two active players on the issue of constitutional reform. No longer the Queen, the Senate, and the House of Commons; it is to be the Queen and the House of Commons. Is it really the government's intention to downgrade the Senate in this manner — to change it from being one of the principal institutions of the Constitution to that of being virtually an afterthought to the incorporation of the BCNI?

I hope our committee will make sure that this idea is very carefully explored, and that it will do what it can to bring the matter before the courts. I cannot believe that the courts will uphold it, either as a correct interpretation of the law or as the correct usage of an application for amendment to the Constitution.

**Hon. Joyce Fairbairn (The Hon. the Acting Speaker):** I must inform the honourable senator that his speaking time has expired. Is leave being sought to continue?

**Senator Pitfield:** Yes.

• (1440)

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I wonder if we could extend the usual time frame. This is the last day of debate. Accordingly, I think we should keep track of our time. I would propose that we give leave to Senator Pitfield to continue for a further 15 minutes.

**The Hon. the Acting Speaker:** Is it agreed, honourable senators, that Senator Pitfield continue for another 15 minutes?

**Hon. Senators:** Agreed.

**Hon. Marcel Prud'homme:** Honourable senators. I intended to participate in the debate, but I would be more than happy to give to Senator Pitfield all the time to which I would be entitled.

**The Hon. the Acting Speaker:** The Honourable Senator Hays has suggested 15 minutes. Would he be prepared to follow Senator Prud'homme's suggestion?

**Senator Cools:** Let us just give Senator Pitfield as much time as he wants.

**The Hon. the Acting Speaker:** Senator Pitfield, please continue.

**Senator Pitfield:** Honourable senators, I wonder if this legislation is to be a precedent for other takeovers by the executive. I refer to the sort of thing that we have been seeing more of in recent years. I noted a while ago that an Order in Council had been passed under the transfer of duties act that essentially vested in the Prime Minister powers of appointment that Parliament had previously.

In my early days in Ottawa, I had argued long and fretfully about leaving matters to the Minister of Energy, Mines and Resources to deal with in those days. Here they are, 10 years, 11 years after that big debate, sweeping the changes out the door and bringing in new changes. I considered the question of how one weighs the view of ministers and members of Parliament 10 years ago against what is essentially the view of officials today. At what point does the onus of leadership switch from one to the other?

Again, honourable senators, one thinks in terms of the application to this legislation of the powers of ministers in relation to takeovers of responsibilities. Is there ever any opportunity for the process to be tested once it disappears into the maw of the government machine?

The Prime Minister has expressed his concern for what the debate on Bill C-20 might bring forward in relation to his reputation in history. I was calling a moment ago for a reference of this bill. What is to be gained if a reference is made and lost some way down the road, as opposed to if it is done today voluntarily? One of the duties of a person appointed to an office is that he or she is to defend that appointment. What is the application of the oath of office that this individual took when he or she assumed office? Surely, it is to defend the appointment. How does one defend the appointment when the pressure exists to opt for the fruit of a change in policy? It is difficult to imagine the pressure that one can come under.

Finally, we know it does not really matter, but, nonetheless, remembering the Queen's law is simply a matter of politeness. I confess to being somewhat embarrassed, as a grown adult, that we can drop on the Queen in this way the changes that we are proposing. Whatever the government wishes to do, it is likely that the system will allow it to do it. This certainly seems to be the outlook in this instance, and it makes me mad.

Honourable senators, I should like to make it clear that I have no financial purpose in making this argument. Like many other senators, it is not the money that brings me here each week. I agree that it is interesting and satisfying work, but, take it from me, let's not just sit on it. Let's get it into someone else's hands. Use it to get more supporters, if you will. Political participation is vital to the system. It is very important that we recruit new members to our political parties. We need to involve more members of the private sector in the tasks of government. If we are to deal with the issue, let us deal with it forthrightly.

• (1450)

The foundation of democracy, we are taught, is participation. The mainstay of participation is the party. It seems to me that, in some senses, the private sector system is often fulfilled by the party system. The health of the parties is not all that vigorous. The party change needs to be refreshed.

Rather than taking the Senate out of context and making it simply another entry in the Prime Minister's date book, let us take hold, and determine our view of these proceedings.

I am not raising the policy; I am simply raising the question of whether we are going about this wisely. Why now? I have been one of many officials who, over the years, has worked away at trying to understand the governmental process. I stood with Mr. Pearson on the steps of the Château Laurier hotel in the early 1960s, after he had spoken to a Liberal convention, when reporters came up to him and said, "Prime Minister, they are debating whether it is better to be red or dead. What relationship has this to your position on the Constitution?" It was early in the national political agenda then. I do not think the Prime Minister had given a great deal of thought to his reasoning, but he had clearly come to the conclusion that, insofar as he was concerned, it was probably somewhat better to be red than dead.

We then got into a two-step process of dealing with the Constitution as a process and as a practical question of substance. We discovered that we did not know that much about the Constitution and how it worked. There were all those wonderful law books, but few answers. Therefore, the exercise I mentioned became entrenched in the system 40 years ago.

It is now coming to a close, as a result of Bill C-20. Bill C-20 will put in place some basic ideas with regard to the Constitution, some basic processes with regard to how the interests of the provinces and certain organizations are to be considered. It lays down an understanding of the negotiation process: that which can be initiated by a government and that which cannot. It also sets out the role of information. Above all, it is an important element in the process of negotiating constitutional change.

You will have occasion to tell your friends of a Thursday afternoon when you saw the wonderful hand of friendship reach

across this room as you indulged one of your members by letting him reminisce when you should have been getting on with your work. Under those circumstances, why would anyone raise the issues that I have? That is, to me, one of the wonders of this country. Why, without any special study and out of the clear blue sky, would the federal government suddenly conclude that it wants to downgrade a constitutional institution whose role has really done nothing but increase over the years? It has a record of contribution to our society that few other institutions can meet. Is someone preparing to call for a unicameral chamber in our federal system?

• (1500)

**The Hon. the Speaker:** Honourable Senator Pitfield, I regret to have to interrupt you, but as it is now 3:00 p.m., pursuant to the order adopted by the Senate on Tuesday, May 16, 2000, it is my duty to interrupt the proceedings to dispose of all questions on the motion of the Honourable Senator Boudreau, P.C., for the second reading —

**Senator Hays:** Honourable senators, the order of the Senate calls for a one half hour bell, leading to a vote at 3:30 p.m. — that is, assuming the voice vote is such that a standing vote is called for. Senator Pitfield has not finished his remarks, and we have two other speakers who wish to make comments before we dispose of this matter at second reading stage, namely, the Leader of the Opposition and the Leader of the Government.

Honourable senators, might we agree to grant leave to vary the order to provide an additional 15 minutes? I should hope that Senator Pitfield could conclude and the Leader of the Opposition and the Leader of the Government — in that order — could have some of that time. I propose that we extend the time for a further 15 minutes. Five minutes for each of them would probably be appropriate. If Your Honour could call that, assuming there is leave, then at least we shall have some comments on the record from important contributors to this debate.

**The Hon. the Speaker:** It is proposed by the Honourable Senator Hays that we defer the ringing of the bells for 15 minutes to allow five minutes each for the three speakers remaining, namely, Honourable Senator Pitfield, P.C., Honourable Senator Boudreau, P.C. and Honourable Senator Lynch-Staunton.

Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** We shall proceed on that basis, then. The bells will ring at 3:15 p.m. and the vote will take place at 3:30 p.m.

**Senator Pitfield:** Honourable senators, I wish to thank you for allowing me this last opportunity to wrestle with the tiger and try to redeem myself in four minutes.

The more you look at the change that is being proposed with regard to the Senate, the more you realize that it is so ridiculous that it must be preposterous. The government in office is no immune from making strange decisions. I have no doubt that our committee will want to look carefully at what is being proposed



When someone says that he does not like the Senate, I tend to say, "Why, that is great. The more people who dislike the Senate, the more people who will want to change it and we can get on with that job." Let us not pretend that the failings of the Senate are all at the door of its incumbents. Let us, rather, understand the two legislative chambers that have been the practice both in this country and in the United States for many years. There is a whole side of the relationships of individuals that is covered by our memories of these sorts of institutions.

When they come knocking at your door, and you want to unload onto those you honour and respect and believe in what you think are the lessons of your time, remember, I beg you, the literal meaning of your oath of office. Remember that timing is the critical matter in many of the decisions that you are here to deal with — timing with respect to your position and timing with respect to when it is time for you to sit down.

**Hon. Senators:** Hear, hear!

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have spoken already at this stage of the debate. I am prepared, therefore, to yield my five minutes to the Honourable Senator Pitfield, if he has not concluded his remarks.

**The Hon. the Speaker:** Honourable Senator Pitfield, at this stage you are offered another three minutes.

**Senator Pitfield:** Honourable senators, I remember when Keith Davey used to sit over in the corner on the top row and say, "Do not call him Mr. Speaker." As a result, I did not speak to the Speaker for the first 10 years that I was here.

I do have one thing to address on this subject and to those I have worked with on the matter over the years. I am grateful for the opportunity to confide this, namely, that it is terribly important that we develop a view of our country and what we are trying to achieve. It is terribly important that we stand for what we believe in and not ask ourselves first whether it will wash up in the rooms of those upstairs. There is a coherent and national story to our country. I believe with all my heart that the time is coming when we shall be out there trying to sell it to our compatriots.

• (1510)

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I rise to speak briefly in support of Senator Stratton's amendment, which we shall be voting on first, to the effect that we not consider Bill C-20 at this time but, rather, send the subject matter to committee. I want to add to the argument by reading to honourable senators what is entitled, "A Solemn Declaration Respecting the Right of Quebecers to Decide on Their Future," which was tabled in the National Assembly of Quebec on May 3 by the official opposition, which, I remind all honourable senators, is the only strong federalist party we have in Quebec.

I shall read the pertinent parts without taking them out of context.

BE IT RESOLVED THAT THIS ASSEMBLY: Reaffirm that Quebecers have the right to choose their future and to

decide their constitutional and political status themselves, and that this right must be exercised in accordance with the constitutional or international laws, conventions and principles that are applicable to the territory of Quebec....Recognize that Aboriginal nations have particular concerns, claims and needs within Quebec and that the existing rights of these nations — ancestral, treaty and other rights, including their right to autonomy inside of Quebec — must be protected and confirmed. Reaffirm that the National Assembly alone has the power and ability to set the terms and conditions for the holding of a referendum in accordance with the *Referendum Act*, including the wording of the question. Declare that when Quebecers are consulted in a referendum held under the *Referendum Act*, the applicable democratic rule is an absolute majority of votes deemed valid. Reaffirm that Quebecers have the right to expect that any popular consultation on Quebec's secession from Canada will have a clear question and that, when such a consultation is held, the government of Quebec will respect the Reference on Quebec Secession of August 20, 1998, particularly respecting the constitutional obligation to negotiate on the basis of the democratic principle, the rule of law, constitutionalism and federalism, as well as the protection of minority rights.

There is no room for Bill C-20 in this declaration. The official opposition there has spoken out officially against Bill C-20. That declaration was presented on behalf of the only federalist party in Quebec on which we can rely to fight any referendum. We cannot ignore its voice unless we want to play into the hands of the Parti Québécois, as by supporting Bill C-20 at any stage we shall be sanctioning deep divisions within federalist ranks in that province, divisions which could well have fatal consequences.

There is no urgency to Bill C-20, unless pandering to the vanity and pride of a prime minister is considered an urgency. Even the hard-line separatists agree that secession of Quebec is out of the question, and that any future referendum will be on a form of political and economic association, not on outright separation.

Why the haste to pass a bill that is vague, contradictory, incomplete, selective in its use of a Supreme Court opinion and, even worse, divides federalists rather than unites them? We would be better advised to set the bill aside for now and examine the objections and concerns raised here on both sides of the chamber, both by those who oppose the bill and by those who support the objectives of the bill but are still very unhappy with it.

Even if only one of the objections raised here is valid, the bill is seriously flawed and deserving of amendment, if not rejection. Better this cautious approach than the one proposed by the government which is to fast-track the bill without change and let the future determine whether it can even be applied without stumbling into a constitutional morass. This, the Senate must avoid. Support for Senator Stratton's amendment will accomplish exactly that.

**Some Hon. Senators:** Hear, hear!

**The Hon. the Speaker:** It being 3:15 p.m., in accordance with the leave given, I shall now proceed with the question.

It was moved by the Honourable Senator Boudreau, P.C., seconded by the Honourable Senator Hays, for the second reading of Bill C-20, to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference,

And on the motion in amendment of the Honourable Senator Stratton, seconded by the Honourable Senator Lynch-Staunton, that the motion be amended by deleting all the words after the word "That" and substituting the following therefor:

"Bill C-20, An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference, be not now read a second time but that the Order be discharged, the Bill withdrawn and the subject-matter thereof referred to the Standing Senate Committee on Legal and Constitutional Affairs."

Is it your pleasure, honourable senators, to adopt the motion in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motion in amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion in amendment please say "nay"?

**Some Hon. Senators:** Nay.

*And two honourable senators having risen.*

**The Hon. the Speaker:** Honourable senators, we shall have a standing vote. The bells will ring for 15 minutes. The vote will be held at 3:30 p.m.

• (1530)

**The Hon. the Speaker:** Honourable senators, the question before the Senate is the motion in amendment by the Honourable Senator Stratton.

Motion in amendment negated on the following division:

## YEAS

### THE HONOURABLE SENATORS

Atkins  
Beaudoin  
Berntson  
Bolduc  
Carney  
Cochrane  
Cogger  
Comeau  
DeWare  
Di Nino  
Doody  
Forrestall  
Grimard  
Johnson  
Kelleher

Keon  
Kinsella  
LeBreton  
Lynch-Staunton  
Murray  
Nolin  
Oliver  
Prud'homme  
Rivest  
Roberge  
Robertson  
Rossiter  
Simard  
St. Germain  
Stratton—30

## NAYS

### THE HONOURABLE SENATORS

Austin  
Bacon  
Boudreau  
Bryden  
Chalifoux  
Christensen  
Cook  
De Bané  
Fairbairn  
Ferretti Barth  
Finnerty  
Fitzpatrick  
Fraser  
Gill  
Grafstein  
Graham  
Hays  
Hervieux-Payette  
Joyal  
Kenny  
Kolber

Kroft  
Mahovlich  
Mercier  
Milne  
Pearson  
Pépin  
Perrault  
Perry Poirier  
Poulin  
Poy  
Robichaud  
(L'Acadie-Acadia)  
Robichaud  
(Saint-Louis-de-Kent)  
Rompkey  
Ruck  
Stollery  
Taylor  
Watt  
Wiebe—39

## ABSTENTIONS

### THE HONOURABLE SENATORS

Cools  
Corbin  
Finestone

Gauthier  
Kelly  
Pitfield—6



**The Hon. the Speaker:** Honourable senators, the question now before the Senate is on the main motion, that Bill C-20 be read a second time.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motion please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motion please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen.*

**The Hon. the Speaker:** Call in the senators.

Honourable senators, pursuant to the order, we shall proceed with the vote now.

Motion agreed to and bill read second time on the following division:

#### YEAS

##### THE HONOURABLE SENATORS

Austin	Kolber
Bacon	Kroft
Boudreau	Mahovlich
Bryden	Mercier
Chalifoux	Milne
Christensen	Pearson
Cook	Pépin
De Bané	Perrault
Fairbairn	Perry Poirier
Ferretti Barth	Poulin
Finestone	Poy
Finnerty	Robichaud
Fitzpatrick	(L'Acadie-Acadia)
Fraser	Robichaud
Gill	(Saint-Louis-de-Kent)
Graham	Rompkey
Hays	Ruck
Hervieux-Payette	Stollery
Joyal	Watt
Kenny	Wiebe—38

#### NAYS

##### THE HONOURABLE SENATORS

Atkins	Keon
Beaudoin	Kinsella
Berntson	LeBreton
Bolduc	Lynch-Staunton
Carney	Murray
Cochrane	Nolin
Cogger	Oliver
Comeau	Prud'homme
DeWare	Rivest
Di Nino	Roberge
Doody	Robertson
Forrestall	Rossiter
Grimard	Simard
Johnson	St. Germain
Kelleher	Stratton—30

#### ABSTENTIONS

##### THE HONOURABLE SENATORS

Cools	Kelly
Corbin	Pitfield
Gauthier	Taylor—7
Grafstein	

#### REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I move that the bill be referred to the Special Senate Committee on Bill C-20, the committee that was struck on Tuesday to carry out a study of the bill and to report back to the chamber.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**Some Hon. Senators:** On division.

On motion of Senator Hays, bill referred to the Special Senate Committee on Bill C-20, on division.

• (1540)

## COMMITTEE OF SELECTION

### SIXTH REPORT ADOPTED

Leave having been given to proceed to Reports of Committees, Order No. 7:

The Senate proceeded to consideration of the sixth report of the Committee of Selection (nomination of certain Senators—Special Committee on Bill C-20), presented in the Senate on May 17, 2000.—(*Honourable Senator Mercier*).

**Hon. Léonce Mercier:** Honourable senators, I move the adoption of this report.

Motion agreed to and report adopted.

## BUSINESS OF THE SENATE

**Hon. Pat Carney:** Honourable senators, I ask for the consent of the Senate to proceed to Item No. 3 under Senate Public Bills, which deals with second reading of Bill S-21. I understand this has been discussed between the house leaders.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should very much like to accommodate Senator Carney, however I regret that I am unable to do so in that I must give priority to government bills.

I would call as the next order, Item No. 4 under Government Business, second reading of Bill C-26.

## CANADA TRANSPORTATION ACT COMPETITION ACT COMPETITION TRIBUNAL ACT AIR CANADA PUBLIC PARTICIPATION ACT

### BILL TO AMEND—SECOND READING—DEBATE ADJOURNED

**Hon. Raymond J. Perrault** moved the second reading of Bill C-26, to amend the Canada Transportation Act, the Competition Act, the Competition Tribunal Act and the Air Canada Public Participation Act and to amend another Act in consequence.

He said: Honourable senators, I appreciate the opportunity to speak to this chamber on the matter and substance of Bill C-26, which is the government's legislative response to the airline restructuring which began some nine months ago.

Honourable senators will know that this important bill was passed by the House of Commons —

**The Hon. the Speaker:** Honourable senators, could we have order, please, so we can hear the honourable senator who is speaking? If it is necessary to have conversations, I would urge you to have them outside of the chamber so that we can have a proper debate.

**Senator Perrault:** Thank you, Your Honour.

Honourable senators will know that the House of Commons passed this important bill on Monday, May 15, and that there is a great need for us to carry out our review expeditiously.

[Translation]

Senators will remember that this important bill was passed by the House of Commons on Monday, May 15, 2000 and that we must give it serious attention.

[English]

Numerous stakeholders have their own reasons for wanting this bill to come into force as quickly as possible; indeed, this bill has something in it for each of them. Communities currently being served want the assurance that Air Canada can be held to its commitments made to the Minister of Transport to maintain service to all the points that were being served by Air Canada, Canadian Airlines and their wholly owned subsidiaries last December 21.

Communities that may be at risk of losing services want air carriers to give notice of exit. They also want carriers to provide an opportunity for the elected officials of the municipal or local government at the point or points of service to meet and discuss with the carrier the impact of the proposed discontinuance or reduction of service. The proposed legislation would provide for such a process to take place.

Consumers want the assurance that there will be fair pricing. This will be promoted by the increased scrutiny of prices on monopoly routes and, for the first time in over 15 years, will include scrutiny of cargo rates. This will be complemented by the restoration of the ability of the Canadian Transportation Agency to review the terms and conditions of domestic carriage in the same manner as it now reviews the terms and conditions of international carriage.

Consumers are anxious for the appointment of the proposed air travel complaints commissioner who would be located in the Canadian Transportation Agency. This person will review written complaints from persons who have not been able to resolve their complaints satisfactorily with the airlines. The commissioner will be able to request documents for review and to mediate where possible. There will also be semi-annual reports listing complaints with carriers involved and indicating any systematic problems that need to be addressed.

Consumers should be pleased that they will be able to deal with Air Canada and its subsidiaries, including Canadian Airlines, in the official language of their choice. Where there is significant demand, of course, some provision is to be provided.

[Translation]

Consumers should be pleased that they will be able to deal with Air Canada and its subsidiaries, including Canadian Airlines, in the official language of their choice. This legislation will be implemented progressively.



[English]

Employees want the assurance that Air Canada's commitment to no voluntary layoffs or relocation for the next two years will be respected. Smaller carriers have a longer list of expectations. This bill contains enforcement measures that should guarantee that Air Canada will implement the undertakings it made to the Commissioner of Competition with respect to access to facilities and services these carriers need to carry on their businesses. The bill makes these undertakings enforceable and provides penalties for non-compliance.

The bill also contains amendments to the Competition Act which provide for making a regulation that will set out the anti-competitive acts and conduct of a person operating a domestic air service. This bill will make such behaviour reviewable by the Competition Bureau and Tribunal. It will give some assurance that smaller carriers will have some protection if they try to compete with the dominant carriers.

Smaller carriers will appreciate the removal of exclusive use clauses in confidential contracts, which should give them more scope for attracting corporate travel contracts for business travel. Travel agents will want passage of this bill because it gives them an exemption from the conspiracy provisions of the Competition Act so that they can negotiate collectively for domestic commissions with a dominant carrier.

I should even venture to say that Air Canada wants this bill passed because it will confirm the framework within which it must operate, not only on the service side but on the corporate side as well.

This bill allows the individual share ownership of Air Canada shares to rise from 10 per cent to 15 per cent. It also allows the foreign ownership limits of Air Canada to change at the same time as the rest of the air industry when the Governor in Council exercises the authority currently provided in the Canada Transportation Act to amend the percentage of allowable foreign shareholdings. There is no change to the obligation to be controlled by Canadians.

Canadian Airlines will like this bill because it confirms the terms and conditions of the government's acceptance of the acquisition deal with Air Canada. For the government, this bill contains provisions for a new process to review major mergers and acquisitions in the airline industry. It also creates greater requirements for monitoring of the industry.

• (1550)

This seems like a long list for a bill that has only some 20 clauses. That is because this bill does not set out to re-regulate the domestic air sector. It makes a few changes to address our new reality. Its focus is not on government intervention in the airline business. Its focus is to promote and protect both competition and the consumer.

I believe this bill has found the balance between these two objectives and will make a significant contribution to achieving the government's main objective of a safe and healthy airline industry that meets the needs of Canadian travellers and shippers

and allows our carriers to compete with confidence on the world stage.

The fact is, honourable senators, we have in our nation two excellent airlines. Both Air Canada and Canadian Airlines have excellent worldwide reputations for excellence and quality of service. This year, Air Canada was rated number one in North America for its cabin service. Just two years ago, Canadian Airlines won the same honour. We have two good operating entities.

I remember some of my recent experiences with American carriers. Other senators have gone through similar nightmare experiences. The customers were charging the gate like an Oklahoma land grab in the 1860s. We have never had that problem with our Canadian airlines.

Some people say that service has gone downhill and does not exist any more. The other day I was on a flight where five people were asked to step down because it was overbooked. That is a problem that faces many airlines from time to time.

The sooner this matter is dealt with in the committee, the better. I invite honourable senators who may not be official members of the committee to come to those meetings. They will be very important to the regions of our country and all of the provinces. It will be of benefit to be there for those talks. I am sure that senators from the Maritime provinces will want to find out about the future of airline scheduling in their communities.

There are stories of long lineups at Air Canada these days, but we could perhaps put this down primarily to growing pains. It will be very challenging to bring together two carriers of this size. The sooner we start studying the bill in committee, to give it the careful examination which it deserves, the sooner we shall have a better airline situation in all of Canada.

I have one final appeal. I hope that honourable senators will agree to send this bill to the Standing Senate Committee on Transport and Communications for detailed scrutiny as soon as possible.

On motion of Senator Forrestall, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should like to call Order No. 1 under Government Business, resuming debate on third reading of Bill C-2, as the next item of business.

## CANADA ELECTIONS BILL

### THIRD READING—MOTIONS IN AMENDMENT— DEBATE CONTINUED

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 375, on page 154,

(a) by replacing line 27 with the following:

“375. (1) A registered party shall, subject to”;

(b) by replacing line 32 with the following:

“registered party shall appoint a person, to be”;

(c) by adding the following after line 36:

“(3) The registration of an electoral district agent is valid

(a) until the appointment of the electoral district agent is revoked by the political party;

(b) until the political party that appointed the electoral district agent is deregistered; or

(c) until the electoral district of the electoral district agent no longer exists as result of a representation order made under section 25 of the *Electoral Boundaries Readjustment Act*;

(4) Outside an election period, the electoral district agent of a registered party is:

(a) responsible for all financial operations of the electoral district association of the party; and

(b) required to submit to the chief agent of the registered party that appointed the person to act as the electoral district agent an annual financial transactions return, in accordance with subsection (5), on the electoral district association's financial transactions.

(5) The annual financial transactions return referred to in subsection (4) must set out

(a) a statement of contributions received by the following classes of contributor: individuals, businesses, commercial organizations, governments, trade unions, corporations without share capital other than trade unions, and unincorporated organizations or associations other than trade unions;

(b) the number of contributors in each class listed in paragraph (a);

(c) subject to paragraph (c.1), the name and address of each contributor in a class listed in paragraph (a) who made contributions of a total amount of more than \$200 to the registered party for its use, either directly or through one of its electoral district

associations or a trust fund established for the election of a candidate endorsed by the registered party, and that total amount;

(c.1) in the case of a numbered company that is a contributor referred to in paragraph (c), the name of the chief executive officer or president of that company;

(d) in the absence of information identifying a contributor referred to in paragraph (c) who contributed through an electoral district association, the name and address of every contributor by class referred to in paragraph (a) who made contributions of a total amount of more than \$200 to that electoral district association in the fiscal period to which the return relates, as well as, where the contributor is a numbered company, the name of the chief executive officer or president of that company, as if the contributions had been contributions for the use of the registered party;

(e) a statement of contributions received by the registered party from any of its trust funds;

(f) a statement of the electoral district association's assets and liabilities and any surplus or deficit in accordance with generally accepted accounting principles, including a statement of

(i) disputed claims under section 421, and

(ii) unpaid claims that are, or may be, the subject of an application referred to in subsection 419(1) or section 420;

(g) a statement of the electoral district association's revenues and expenses in accordance with generally accepted accounting principles;

(h) a statement of loans or security received by the electoral district association, including any conditions on them; and

(i) a statement of contributions received by the electoral district association but returned in whole or in part to the contributors or otherwise dealt with in accordance with this Act.

(6) For the purpose of subsection (5), other than paragraph (5)(i), a contribution includes a loan.

(7) The electoral district association shall provide the chief agent of a registered party with the documents referred to in subsection (5) within six months after the end of the fiscal period.”; and

(d) by renumbering subsection (3) as subsection (8) and any cross-references thereto accordingly,



And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 405, on page 166, by replacing lines 36 and 38 with the following:

"(3) No person, other than a chief agent, or a registered agent or an electoral district agent of a registered party, shall accept contributions to a registered party.

(4) No person, other than a chief agent of a registered party, shall provide official receipts to contributors of monetary contributions to a registered party for the purpose of subsection 127(3) of the *Income Tax Act*."

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 424, on page 174, by replacing lines 14 to 16 with the following:

"(a) the financial transactions returns, substantially in the prescribed form, on the financial transactions of both the registered party and of the registered party's electoral district associations;"

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 426,

(a) on page 176, by replacing lines 36 to 38 with the following:

"shall report to its chief agent on both its financial transactions return and trust fund return referred to in section 428, and on the annual financial transactions returns on the electoral district associations' financial transactions referred to in paragraph 375(4)(b), and shall make any"; and

(b) on page 177,

(i) by replacing line 11 with the following:

"electoral district agents, registered agents and officers of the regis-", and

(ii) by replacing line 20 with the following:

"electoral district agents, registered agents and officers of the party to",

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 473, on page 202, by replacing lines 37 and 38 with the following:

"registered party or to a registered agent of that registered party in the",

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 477, on page 203, by replacing lines 30 to 31 with the following:

"477. A candidate, his or her official agent, and the chief agent of a registered party, as the case may be, shall use the prescribed forms for",

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 560, on page 246,

(a) by replacing line 18 with the following:

"ceipt with the Minister, signed by the chief agent or a registered "; and

(b) by replacing line 25 with the following:

"(a) by the chief agent or a registered agent of a registered".

**Hon. Consiglio Di Nino:** Honourable senators, I rise in support of Senator Nolin's amendments to Bill C-2. As you will recall, I raised this question in my comments on second reading.

Canadians are cynical, and rightly so, in many cases. They are cynical about political finance in this country. There are too many opportunities for abuse, too many loopholes and too many excuses being given for not closing them. The issue of money going to riding associations is a problem we have long chosen to ignore. I am very happy that our colleague Senator Nolin has decided to speak out on the need for reform in this area and to propose some amendments to address the problem.

Honourable senators, openness and transparency are fundamentally important to the health of our political process. We need to lift the veil, as Senator Nolin is trying to do with these amendments, on some of the areas which have to date remained in the shadows.

Honourable senators, secrecy subverts democracy. We fool ourselves if we think Canadians are not interested or that they are not aware of the abuse and misuse of money which occasionally occurs in politics, whether it be in leadership contests, riding association records or candidates for parties. In fact, quite the contrary — not only are Canadians aware, they want to know who is giving money, how much and what for. I believe they have a right to know.

Anyone who has any doubts about this has only to look to the Alliance leadership race. People everywhere are asking, "Who is bankrolling the different candidates, particularly Mr. Long?" Unfortunately, unlike his two rivals, Mr. Long refuses to be upfront with Canadians. He refuses to make public to what degree and from where his funding is coming. No doubt he is hoping that if he says nothing, the issue will just go away.

Honourable senators, this reasoning has served the Prime Minister well since he came to office, but I am not sure Mr. Long has the same warm and forgiving relationship with the media — one newspaper excepted — that Mr. Chrétien has. We shall just have to see.

While I am on this point, it should be said that Mr. Long's fellow leadership candidates have not been much more forthcoming. Mr. Manning and Mr. Day tell us they will only release the names of the contributors. They refuse to divulge how much money individual contributors give. Really, theirs is an empty promise as far as real transparency is concerned.

Honourable senators, what Canadians want is simple. It is what the Honourable Senator Nolin is trying to give them. People have told us time and time again that all they are looking for is simple honesty: Who is giving the money to whom? How much is being given? Are there any strings attached?

If there are strings attached, as I suspect sometimes happens, then the answer is very simple: Politicians, or wannabe politicians, should refuse it. They should do the honourable thing, as Mr. Klees recently did when he withdrew from the Alliance leadership race. They should say, "No, I am not going to take your money or your help if there are secret obligations attached." This is the only honest thing to do.

Critics would have Canadians believe that all politicians routinely — or sometimes — hide the sources of their money. Indeed, they would have us believe that politicians actively collaborate to keep their sources hidden from the public.

I believe it is just the opposite. In many cases, it is the donors themselves who provide the pressure to keep their names hidden. It is the donors who do not want to be identified publicly with a candidate or party and who do not want people to know how much they have given. Again, I say, if money is offered conditionally, politicians should refuse to accept it. It is as simple as that.

Honourable senators, these amendments are a significant step toward political finance reform. Not to unduly belabour the point, it gives strength to the arguments raised by me during second reading, and by Senator Nolin and others during this debate, to bring more openness, transparency and accountability into the system of political funding. Surely, no one could be against such an initiative, particularly an initiative so long overdue as this.

• (1600)

Riding associations have been called the black hole of political finance, and not without reason. Riding associations collect significant sums of money and yet much of what they collect often goes unaccounted for, as we heard during testimony before the committee. A recent article in *Maclean's* magazine went as far as to characterize riding associations as operating largely beyond the law's reach. In other words, they are a law unto themselves. They are able to do this because we, by our inaction, have allowed them to.

I read this week in *The Hill Times*, by the way, that despite Senator Hays' arguments of the other day, some members of his party do agree with what Senator Nolin is attempting to do with these amendments. The article quoted at least one Liberal, Judy Sgro, MP for York West, as saying that any attempt to keep the political finance system fair and honest is a plus. *The Hill Times* also cited a Liberal riding president as saying he believed Senator Nolin's effort to amend the bill to be a positive step.

Honourable senators, clearly the secrecy of riding association books and records is a problem. It is a problem of lack of accountability, of perception of abuse, and of cynicism that we ourselves have allowed to build by our failure to act. The problem affects not only riding associations but also leadership races and political funding in general.

By supporting Senator Nolin's amendments, we shall be making a strong statement to Canadians. We shall be telling them that we recognize the problem areas and that we want to do something about them. We are addressing the issue publicly and honestly. We are trying to do something concrete to limit future abuses. By adopting Senator Nolin's amendments, we shall be saying to Canadians that we commit to candour, openness and integrity in the area of political funding, a commitment that will be good for everyone. It will be good for our democracy. It will be a win-win situation.

I urge all honourable senators to give serious thought to this issue and to support Senator Nolin's amendments.

On motion of Senator DeWare, debate adjourned.

## PRIVACY COMMISSIONER

MOTION TO RECEIVE IN COMMITTEE OF THE WHOLE ADOPTED

**Hon. Dan Hays (Deputy Leader of the Government),** pursuant to notice of May 16, 2000, moved:

That the Senate do resolve itself into a Committee of the Whole, at 4:30 p.m. on Tuesday, May 30, 2000, in order to receive the Privacy Commissioner, Mr. Bruce Phillips, for the purpose of discussing the work of this Office.

Motion agreed to.

## HERITAGE LIGHTHOUSES PROTECTION BILL

SECOND READING—DEBATE CONTINUED

Leave having been given to proceed to Senate Public Bills Order No. 3:

On the Order:

Resuming debate on the motion of the Honourable Senator Forrestall, seconded by the Honourable Senator DeWare, for the second reading of Bill S-21, to protect heritage lighthouses.—(Honourable Senator Callbeck).



**Hon. Pat Carney:** Honourable senators, I appreciate the courtesy of leave to move to this matter. I have the problem that was outlined in the discussion of the bill on airline mergers. All of us in this house are captive to airline schedules.

I want to speak to this bill to protect heritage lighthouses. This bill has been sponsored by my East Coast colleague Senator Mike Forrestall. I have been privileged to work on the West Coast aspects of this bill.

The purpose of the bill is to designate and preserve lighthouses, including all buildings and equipment, as part of Canada's culture and history, whether or not they are used as navigational aids. We wish to protect them from being altered in any way, whether it be restoration or renovation, or from being disposed of without public consultation.

People care deeply about the lighthouses on both coasts. Manned lighthouses give a profound sense of the safety net on our coasts. More important, the history of the lighthouses is part of the heritage of our coasts and of our country. The focus of the bill is to provide a process by which the public can be involved in any applications filed with the Department of Heritage for alteration or disposal of a lighthouse.

The Heritage Minister, upon recommendation of the Historic Sites and Monuments Board of Canada, known as "the board," would be able to designate any lighthouse as a "heritage" lighthouse that meets the board's criteria.

Bill S-21 does not make public consultation automatic; however, it does establish a process that interested parties can use to object to applications filed with the Department of Heritage for alterations to these lighthouses. The board shall give all interested parties a reasonable opportunity to make a presentation before it. If the board finds the objection credible, it may advise the minister in its report to recommend to the Governor in Council that the application to alter the lighthouse be refused.

This bill will come into force on a day or days to be fixed by order of the Governor in Council. The precedent legislation, Heritage Railway Stations Protection Act, 1988, did not come into effect until 1991. We would want to avoid such a delay because many light stations are in poor repair and a delay would negate the purpose of the bill.

The cost implications are based on those that Parks Canada has experienced in administering the Heritage Railway Stations Protection Act, on which Bill S-21 is modelled. According to the Historic Sites and Monuments Board, costs involved with carrying out this legislation are basic administrative costs associated with the board.

Parks Canada has obtained \$1 million per year, for five years, to permit a level of response to its new responsibilities under the Heritage Railway Stations Act. However, based on their preliminary inventory of lighthouses and associated buildings, resource implications for Parks Canada could be between \$1 million and \$2 million per year if that formula were applied.

Community groups, such as the West Vancouver Historical Society and other groups on the West Coast, as well as local

governments, are anxious and willing to preserve and restore our lighthouses. This bill accommodates the potential to develop financial partnerships.

There is no current process by which the public has any input as to what happens to these historical Canadian landmarks. The Canadian Coast Guard does not have a mandate to protect the cultural and heritage significance of lighthouses. Nor is it in a position to provide for the care of these heritage buildings.

Time is running out as many of these lighthouses are in critical need of repair. Current legislation for the protection of lighthouses is inadequate. Only 3 per cent nationally have a genuine heritage protection and only 12 per cent have even partial protection and, in B.C., the figure is even lower. The Nova Scotia Lighthouse Preservation Society statistics show that, under current legislation, more lighthouses are being rejected than protected. The federal heritage review office has rejected 157 lighthouses from heritage status.

Some lighthouses in Canada are currently being automated and most of the historical navigational equipment has been removed. There is concern that the Department of Fisheries and Oceans is not taking inventory as it is removing this equipment. Other light stations have been demolished without notice.

This bill would apply to all 120 currently designated heritage lighthouses in Canada. As others are so designated, they will also be covered. In B.C., 9 of 52 light stations are currently designated as fully or partially protected heritage buildings.

Lighthouses are vitally important to British Columbians, given our treacherous terrain and weather. Their history tells a story of the remote and unpopulated coast.

I should like to give you a short history of these nine West Coast lighthouses currently designated as federal heritage buildings in an attempt to display their amazing stories as recorded by the Maritime Museum of British Columbia and the author/lighthouse historian Donald Graham.

At Carmanah Point, on the west coast of Vancouver Island, known as the "graveyard of the Pacific," hundreds of mariners have drowned in shipwrecks because they missed the entrance to Juan de Fuca Strait. Originally this lighthouse was to bracket an American position on Cape Flattery, and it was to be located on Bonilla Point on the Canadian side. Unfortunately, when the shore party offloaded supplies under thick fog and waited until the fog had cleared, they found themselves on Carmanah Point, some distance away. Rather than drag supplies back down the cliffs, they built the lighthouse at Carmanah.

• (1610)

Established in 1891, Carmanah became the first traffic control centre. At this station, a steam whistle was installed, providing ship-to-shore communication in dark as well as foggy conditions using telegraphic codes. The duties of the lightkeeper included monitoring ships along the West Coast and communicating their movement to Victoria. Currently the lighthouse provides a service to the people using the West Coast Trail, with support and first-aid facilities to people who get hurt.

Fisgard, another station, was built in 1860. This was the first manned light station built on the west coast of Vancouver Island. Its location was to mark the proximity to Victoria Harbour. This building is an architectural marvel. It is unique in its composition of function and workmanship because it has a solid granite base that is four feet thick, the bricks were imported from England, and an iron spiral staircase was imported from San Francisco. The architect, H.O. Tiedeman, was a renowned architect of the day who also built Victoria's first legislative building. Today, the lighthouse is part of the Fort Rodd Hill National Historic Park.

Nearby Race Rocks was built in 1842 to mark the terrifying 8-to-10 knot tides that entrapped vessels caught in its grip. These tides were second only to the dreaded Ripple Rock in Seymour Narrows, which was blown up in the 1950s with an explosion second only to the atomic bomb dropped on Hiroshima. To this day, lightkeepers still save people who are being spun out to sea by the strong tidal currents.

Estevan Point was the site at which the First Nations people of Vancouver Island first set eyes on a European ship in 1774 and first made contact with European people. Captain Juan Perez sailed into these waters aboard the *Santiago*, with the intention of exploring more northerly latitudes and claiming land for Spain. The point was named after Perez' second-lieutenant, Estevan José Martínez.

When it was built in 1909, the lighthouse at Estevan Point was the boldest, most beautiful lighthouse in all of B.C. — an eight-sided column soaring 150 feet above the ground. It is in an area that is claimed and known as the Hesquiat land, part of the Nuuch'ah'nulth Tribal Council.

I see my colleague Senator Mahovlich nodding because we met with them on our recent trip to the West Coast.

Estevan Point lighthouse is also alleged to be the only light station to be attacked by enemy gunfire. Honourable senators may remember that there was a terrible scare on the West Coast during World War II. In 1942 a Japanese submarine, lying two miles off the coast, shelled the light station. Later it was revealed that this may have been a hoax to persuade the government in Ottawa to tighten security and increase its measures to intern Japanese Canadian citizens.

Langara lighthouse — special for my colleague Senator Forrestall — is on Graham Island, which is the northernmost island of the big islands of the Queen Charlotte Islands. A lighthouse was built here because at that time the Grand Trunk Pacific Railway line was planned for Prince Rupert to ensure that the ships coming into Prince Rupert, and to the connection with this great Grand Trunk Pacific Railway, would arrive safely.

Established in 1913, right from the start Langara was a superlative lighthouse: the furthest out, the largest island, with major weather and tidal wave observations. It is one of the most isolated light stations and, as late as 1980, Transport Canada, which then held the mandate for lights, was still warning prospective lightkeepers away from Langara light. This was

based on the argument that the place was best suited to someone who had already done time in isolation.

Pachena Point light station was established in 1908, after the shipwreck of the *Valencia*, and was the marker on the West Coast. The *Valencia*, a San Francisco ship carrying 160 passengers, surpassed any other shipwreck before the *Titanic* in terms of sheer horror. On its last run from San Francisco to Victoria, the passenger ship struck rocks 10 miles west and north of Carmanah light. The captain, O.M. Johnson, fooled by the fog, which engulfed the steamer soon after she left the harbour, and forgetting to take into consideration the Japan Current, thought he was near Juan de Fuca. The ship hit the rocks amid terrible waves.

Frank Lehm, one of the survivors and a freight clerk on the *Valencia*, reported that he would forever remember the screams of men, women and children mingled in awful chorus with the shriek of the wind, the dash of the rain, and the roar of the breakers. As passengers rushed on deck, they were carried away in bunches, by huge waves that seemed as high as the ship's mastheads. The ship began to break up almost at once, and women and children were lashed into the rigging above the reach of the sea. It was a pitiful sight to see frail women, wearing only their nightdresses, with bare feet on the frozen ratlines, trying to shield the children in their arms from the icy wind and rain. Most of them died.

Triple Island, also known as "the Rock" or "Little Alcatraz," conforms most closely to the austere image of popular imagination — a tower rooted upon a rock, a man-made bulwark against the implacable, rushing power of the sea. The cluster of rocks jut out of Brown Passage, 28 miles west of Prince Rupert. It, too, was linked to the Grand Trunk Pacific Railway as a powerful source of help to northern mariners.

Brockton Point lighthouse, of course, is at the entrance to Vancouver Harbour. Established in 1890, Brockton Point marked the abrupt turn into Coal Harbour for inbound ships and drew outbound vessels toward First Narrows.

In July 1906 came the inevitable collision in the Narrows. After that there was *Princess Victoria*, which hit the small Union Steamship tug, the *Chebalis*. Any sailor will appreciate Captain Howse of the *Chebalis* confessing before collapsing in shock and grief in the aftermath, "I thought we were making good time and did not trouble to look behind." It was a fatal blunder. "I had just altered course a little more to starboard when suddenly I heard a whistle and as I looked out astern, I saw the *Victoria* on top of me."

Only eight of the *Chebalis*' 15 passengers and crew survived this tragedy. It was after that when Brockton Point lighthouse was improved. This lighthouse has personal significance to my family because my son-in-law is a descendent of Portuguese Joe, who squatted on Brockton Point and married the daughter of the Squamish chief. Our family maintains that Brockton Point belongs to us. I promise to leave politics before pursuing that land claim.



Point Atkinson lighthouse is probably the most famous of Canada's West Coast lighthouses. It is located on the west shore and started operation in 1874. Its tower is synonymous with Vancouver for foreign seamen and residents alike. The people of West Vancouver have a nearly mystical attachment to "their" lighthouse and to the 185-acre park, which contains the last stand of virgin coastal timber to be found in that part of the province.

Honourable senators might be interested to know that lightkeepers are very poorly paid. With an MP's patronage position, an MP could appoint the lightkeeper, usually for about \$40 a month, out of which he paid for general supplies and coal. After 26 years of service, during which he had not taken a 24-hour day off, the lightkeeper Walter Erwin retired in 1909. For all of his efforts, his pension was a mere \$33 per month.

Not all the lighthouses that we would like designated heritage are considered heritage lights. On my own island of Saturna, our lighthouse does not have a heritage designation. The lighthouse was established in January 1888.

East Point lighthouse, like so many others, went up over the hulks of wrecks. East Point marked the final destination of the heavily laden barque *John Rosenfeld*, carrying an overweight shipment of coal bound for San Francisco. As it passed Saturna Island, the captain of the tug *Tacoma* was misled by weather conditions, causing the *Rosenfeld* to run aground near Boiling Reef. Boiling Reef is aptly named, as it boils just where the Juan de Fuca Strait becomes the Strait of Georgia, half a mile from the boundary between Canada and the U.S. At this site, East Point, a light was erected to improve safety along this main shipping channel that separates Canada and the U.S. It has been destaffed and is now occupied by volunteers who look out for seamen in distress. The building is used, in part, by volunteer firefighters and our fire engine is kept there. Another part of the site has become a regional park for the use of people in the region. It is beloved by Saturna Islanders. People have an attachment to the light, and that is why we think people will look for an opportunity to contribute to its upkeep.

Honourable senators, I urge you to support this bill.

On motion of Senator Carney, for Senator Callbeck, debate adjourned.

• (1620)

## STATISTICS ACT NATIONAL ARCHIVES OF CANADA ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-15, to amend the Statistics Act and the National Archives of Canada Act (census records).—(Honourable Senator Johnson).

**Hon. Nicholas W. Taylor:** Honourable senators, I am somewhat bothered by Senator Milne's motion. I am not in favour of making old census data available to the public, for a number of reasons. This is a topical issue because the Privacy Commissioner has just told us that the Government of Canada has about 1,000 bits of information on each of us. The issue of whether information that the government has acquired about us is kept private is currently in the public sphere, and the first place where the government gets information is from census forms.

There are several reasons I am not happy with the thought that my grandchildren could find out how I lived. It is very intriguing to know what grandpa and great-grandpa did, but if people know that the information they put on their census forms will become public at some time in the future, that will govern what information they provide. It is no longer data that one thinks will be buried forever. It becomes almost like a radio or TV interview in that the information will be made public.

I am also concerned about the sanctity of the contract. People from 1900 until today who participated in the census had every reason to believe that they had contracted with the government of the day to keep their information private forever. We are now considering breaking that contract. Once we do so, what is to keep us from shortening the period for which the information is kept secret?

I am loathe to have the government open files and release information after people have died, with which people the government has contracted. When censuses are conducted in the future, perhaps people should be advised that the information will be released at a set time in the future. I do not agree, however, that we can renege on a contract made with the Government of Canada 50 or 80 years ago. That would be to break an ancient trust.

My next point is that if you know that the information you are providing will be revealed in the future, you may have a tendency to embellish. You may paint your life in the way that you would like your grandchildren to think it was.

Finally, although historians say that census information is useful for valid reasons such as predicting birth defects and other inherited traits, they can also be used to find out information that the person who provided the information would not have wanted revealed. A census is sort of like going to confession. You do not expect to read about it in the papers later.

Honourable senators, those are my reasons for opposing this motion.

**Hon. Lorna Milne:** Would the Honourable Senator Taylor accept a question?

**Senator Taylor:** Yes.

**Senator Milne:** Is Senator Taylor aware that the only questions that were asked 92 years ago were name, address, relationship to the head of the family, and age? The questions in the census up until 1951 were very innocuous.

One of the objections to this bill, which is constantly reiterated, is that people were promised that the census results would be forever kept secret. Better minds than mine have done an enormous amount of research of the records, and nowhere in the records of the House of Commons, the Senate, or the newspapers of that time was there any mention of perpetual privacy promised for personal census results — not once, not ever.

• (11630)

Is the Honourable Senator Taylor aware that never once has a complaint been registered with the Privacy Commissioner, Statistics Canada or the National Archives of Canada about the release of historic census results? This applies not only in Canada but also in the United States and Great Britain. Never once has a complaint been made about the release of historic census data. I am talking about something which applies to approximately 620 million people in those three countries.

**Senator Taylor:** Honourable senators, I thank the honourable senator for her questions.

The honourable senator mentioned that census questions asked in the early part of the century were limited. I did not intend to suggest that those limited questions were the only ones ever asked. The point is that the little needle-noses who acquire and put together the questions asked of people on the census are making the forms longer and longer. As a matter of fact, I was with someone the other day when they opened their mail box. After uttering an expletive, the person said, "I got the long form to fill out." In other words, we are being asked to give the census takers more and more information.

The information I am talking about is information from the 1920s, the 1950s and the 1990s. In other words, there becomes a rolling deadline in that, once the seal has been broken, it will go on and on. Therefore, more complete information is being asked for today.

How will the decision be made as to what information should be released? Will the request down the road be: "We want the information until 1920, but not after that." In other words, the whole sanctity of the contract will be destroyed.

The honourable senator said that no one has ever made mention of the lack of privacy. One reason for that might be that most of those people are dead. The dead do not complain.

I do not know what importance can be attached to the lack of complaints of invasion of privacy. In law, just because you do not complain about something does not mean you like it. The honourable senator is advocating a form of negative billing to census taking. In other words, if you do not get up to complain, it is all right. I question that.

The honourable senator is saying, "I want that information. My generation wants it, so we should have it." I hope my

grandchildren do not start kicking the slats out of their cradles and demand all the information from my generation. There is an implied contract to keep the information private.

**Senator Milne:** Honourable senators, I wish to ask a follow-up question of the Honourable Senator Taylor.

Is Senator Taylor aware that, in 1983, the new Privacy Act regulations permitted public access to name-identified census data after 92 years? This is a provision written into the Privacy Act. The post-1901 census is not excluded from this public access. If it was not the intention of the government, as they had always done up until that point, to release, at 10-year intervals, the further census results, why on earth in 1983 would they be writing laws along that line?

**Senator Taylor:** That is a good question, honourable senators. In effect, the honourable senator has turned my own argument around. I have said that there were no precedents and that we had a contract not to open up that data. The honourable senator is saying, "They have already broken the contract, so why can we not keep breaking it?" The only argument to that is that two wrongs do not make a right.

**Hon. Sheila Finestone:** Honourable senators, would the Honourable Senator Milne clarify the comments that she just made? As I understand the provision of the Privacy Act, it allows for the opening of census data for research purposes only. It is not a general opening of all the information contained in the census files of 1901 and on, but for a deliberate and defined purpose.

**The Hon. the Speaker:** The Honourable Senator Finestone may address a question to the Honourable Senator Taylor, but not to the Honourable Senator Milne in this case. She was addressing questions to the Honourable Senator Taylor.

In any case, I must inform the Senate that the 15-minute period has elapsed. Is the Honourable Senator Taylor requesting leave to continue?

**Senator Taylor:** No.

**The Hon. the Speaker:** Honourable senators, this matter originally stood in the name of the Honourable Senator Johnson. Is it your pleasure, honourable senators, that it remain in her name?

**Hon. Senators:** Agreed.

Order stands in the name of Senator Johnson.

**The Hon. the Speaker:** Honourable senators, I have a request from the Honourable Senator Beaudoin to revert to Bills. He is now prepared to speak to Bill S-22. Is it your wish to proceed to that order?

**Hon. Senators:** Agreed.



[Translation]

• (1640)

## FEDERAL LAW—CIVIL LAW HARMONIZATION BILL

### SECOND READING

On the Order:

Resuming the debate on the motion of the Honourable Senator De Bané, P.C., seconded by the Honourable Senator Rompkey, P.C., for the second reading of the Bill S-22, A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law.

**Hon. Gérald-A. Beaudoin:** Honourable senators, the intent of Bill S-22 is to harmonize federal law with the civil law in Quebec. This is the first bill in this regard. It will be followed by other similar bills, as considered appropriate.

The intent of this bill is reinforce the principle and advantage of bijuralism in Canada. This initiative, which has started to bear fruit today, was not born yesterday. In 1978, a program of joint drafting was instituted at the Department of Justice of Canada so that our legislative drafters could draft originals of bills in English and French so that one was not the translation of the other.

The reform of the Quebec Civil Code in 1994 had a major impact on federal law so that, after establishing a Civil Code section and adopting the policy on applying the Quebec Civil Code in the federal public administration, the Department of Justice created, in 1997, the program to harmonize federal legislation with Quebec civil law.

Canada is a bilingual and bijural country. Bilingualism on the federal level is consecrated by section 133 of the Constitution Act, 1867 and sections 16 through 22 of the Canadian Charter of Rights and Freedoms. We also have the Official Languages Act. The bijural nature of Canada is enshrined in the Constitution, as evidenced in the Quebec Act of 1774, subsection 92(13) and section 94 of the Constitution Act, 1867, and paragraph 41(d) of the Constitution Act, 1982, which protects the composition of the Supreme Court of Canada. The consent of each of the 10 legislative assemblies of the provinces and of the Parliament of Canada is required — the Senate has a suspensive veto of one hundred and eighty days — to modify the composition of the Supreme Court. In my opinion, the composition of the Supreme Court includes the component with expertise in civil law, that is the three justices out of the nine who must be trained in civil law. This is one more example of the bijural nature of Canada.

Subsection 92(13) of the Constitution Act, 1867 attributes to the provincial legislatures jurisdiction over “property and civil rights.” It was this subsection that enabled Quebec to retain its system of private law which took its inspiration from France. For Georges Étienne Cartier, one of the fathers of Confederation, this was a matter of the utmost importance.

Section 94 of the Constitution Act, 1867 allows the federal Parliament, under certain conditions, to make provision for the uniformity of laws relative to “property and civil rights.” Quebec was not covered by this general rule for obvious reasons. This is one case where, on the constitutional level, the status of Quebec differed from that of the other provinces.

As early as 1774, the British lawmakers, thanks to Prime Minister Lord North, had recognized the right of “Canadians” to live under a French civil law system. After the American revolution, Loyalists settled in Canada, in large part in Ontario. The Constitutional Act, 1791, which called for the establishment of two provinces, allowed the Assembly of Upper Canada to introduce common law in that province. The other British colonies in North America were already under common law. The Province of Quebec retained its civil law. Under the Union of 1840, uniting Quebec and Ontario, the situation remained unchanged.

In 1864, the Province of Canada—Ontario and Quebec, that is, Upper Canada and Lower Canada—, Nova Scotia, New Brunswick and Prince Edward Island were thinking of forming a federation. The delegates from Lower Canada wanted to see that province remain a master of its own destiny as far as religion and education were concerned, retaining its system of French civil law.

On June 10, 1857, under the Union, the legislation put forward by Attorney General Georges Étienne Carter to codify the civil law of Lower Canada took effect. The Commission members were selected on February 4, 1859. They were Justices René-Édouard Caron and Charles-Dewey Day from Quebec City, and Justice Augustin-Norbert Morin from Montreal. Eight reports were produced between October 12, 1861 and November 25, 1864. The result was turned over to the legislature on January 31, 1865. A proclamation was issued on May 26, 1866 and the Civil Code of Lower Canada took effect on August 1, 1866, eleven months before Confederation.

In 1867, Westminster recognized the right of Canadian provinces to legislate property and civil rights. This was the most important power to be given provincial legislatures and it later formed the foundation for provincial autonomy. The original four provinces were joined by six others. Only the Province of Quebec is governed by a private law regime of French origin. The other provinces are governed by the common law system. Eugene Forsey was quite right when he wrote:

Quebec is not, has never been, and will never be a province like the others; it is the citadel of French Canada.

Also worthy of note is the *Parsons* decision ([1881-1882] 7 A.C. 96). The Judicial Committee of the Privy Council pointed out that the expression "property and civil rights" in subsection 92(13) of the Constitution Act, 1867, has the same meaning as in section 94. If the central parliament could legislate contractual matters in the province, section 94 would no longer protect Quebec. The Privy Council added that the expression "civil rights" in subsection 92(13) had as broad a range of meaning as the expression "civil rights" used in the Quebec Act of 1774. Under the terms of Article VIII of the Quebec Act, His Majesty's Canadian subjects enjoyed their property, their customs and other civil rights as in the past. In the Quebec Act of 1774, the words "property and civil rights" are used in their broadest sense. There was no reason, said the Privy Council, for these words to have a different or more restrictive meaning in the Constitution Act, 1867.

• (1650)

Bill S-22 offers us an overview of the importance of bijuralism in Canada and the advantages this confers upon us. In this era of the globalization of markets and the internationalization of individual rights and freedoms, our two legal traditions of common law and civil law lend weight to us on the international scene. Let us not forget that 80 per cent of the population of the planet are governed by either common law or civil law.

Incidentally, the fact that Canada is the only country in the world to simultaneously belong to the G-7, la Francophonie, the Commonwealth and APEC, confers upon us a special place in the world.

In addition, I might point out that the training of our legal experts at the University of Ottawa, McGill and Dalhousie, is becoming more and more focussed on bijuralism. These three universities offer a "national program," which offers students who are interested in doing so the possibility of earning two degrees in four years, one in common law and one in civil law. This program is becoming increasingly popular.

Bill S-22 includes a preamble which acknowledges that the unique character of Quebec society is connected in part to its civil law tradition. This is an undeniable fact. With this we are conforming to the motion we passed on December 7, 1995 recognizing Quebec as a distinct society.

The preamble to Bill S-22 sets out the main objectives of this legislation: harmonious interaction of federal legislation and provincial legislation, respect of common law and civil law traditions, full development of our two major legal traditions which give Canadians a window on the world, and facilitated access to federal legislation that takes into account the common law and civil law traditions, in its English and French versions

I readily concede that it is no easy feat to draft such legislation. As Marie-Claude Gervais wrote in the *Journal du Barreau* on September 15, 1999:

Those drafting legislative texts are expected, in a concern for consistency, to respect the principle of uniformity of expression: each term ought to have but a single accepted meaning; each concept ought to have but a single

expression. This principle of interpretation means, in this case, that throughout the legislation, and over and above it, in the entire body of legislation, the same term must have the same meaning.

It should be noted that a bill like this is not drafted in isolation: law professors, the Barreau du Québec, the Chambre des notaires du Québec, and Quebec's justice minister all worked on Bill S-22. In this regard, I recommend an authoritative work of 1,062 pages entitled "The Harmonization of Federal Legislation with Quebec Civil Law and Canadian Bijuralism: Collection of Studies," published by the federal Department of Justice in 1997.

The main features of Bill S-22 have to do with amendments to the Interpretation Act in order to include provisions recognizing the coexistence of the two Canadian legal traditions and confirming the need to give precedence to provincial law when applying a federal law with private law components;

the repeal of pre-Confederation provisions of the *Civil Code of Lower Canada* in so far as they relate to subjects that fall within the legislative competence of Parliament since 1867;

the replacement of pre-Confederation provisions of the *Civil Code of Lower Canada* with respect to marriage.

For the rest, the bill is essentially a housekeeping bill.

It amends 48 federal statutes in order to harmonize definitions, expressions and other words to ensure that federal law reflects both the civil law and the common law. The statutes amended by Bill S-22 have to do with property law, civil liability and security.

As Justice Michel Bastarache of the Supreme Court of Canada so aptly said on November 26, 1998 at a conference on bijuralism:

We have a unique opportunity in Canada to take our inspiration from the two greatest legal systems in the world. Tribute must be paid to the new efforts to take full advantage of this fortunate situation.

I am naturally very favourable to Bill S-22, subject of course to further consideration in committee.

**Hon. Pierre Claude Nolin:** Honourable senators, would the honourable senator agree to answer a few questions?

**Senator Beaudoin:** Yes.

**Senator Nolin:** The honourable senator referred to the *Civil Code of Lower Canada*. Does the Province of Quebec intend introducing legislative amendments to its civil laws?

**Senator Beaudoin:** Eleven months prior to Confederation, the *Civil Code of Lower Canada*, which was based on the Napoleonic code in France, came into effect and, in 1994, as you know, the reformed *Civil Code* came into effect. The federal law had to adjust to the new *Civil Code* of Quebec. They were very careful to respect legislative jurisdictions.



The federal harmonization act meets this objective, in my opinion. I see no legislative jurisdictional conflict between Ottawa and Quebec City in this regard, and I should point out that the Quebec Department of Justice was consulted. I congratulate the federal Department of Justice for undertaking such a formidable task. It took some time, but it was done very well.

This bill will surely be referred to the Standing Senate Committee on Legal and Constitutional Affairs and there each clause of the bill will have to be checked. I am quite optimistic. I think that we shall have no difficulty because the text was considered, and the individuals gave it a lot of thought. They consulted the Bar Association, Quebec and professors, people knowledgeable in civil law and in the application of laws.

**The Hon. the Speaker:** If no other honourable senator wishes to speak, I shall put the question.

It was moved by the Honourable Senator De Bané, seconded by the Honourable Senator Rompkey, that Bill S-22 be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Hays, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

[English]

• (1700)

## CRIMINAL CODE CORRECTIONS AND CONDITIONAL RELEASE ACT

BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Watt, for the second reading of Bill C-247, to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences).—(*Honourable Senator Taylor*).

**Hon. Nicholas W. Taylor:** Honourable senators, in speaking to the motion by Senator Cools, seconded by Senator Watt, for second reading of Bill C-247, to amend the Criminal Code and Corrections and Conditional Release act, I follow Senator Bryden, but my views reflect the opposite side of the question. Senator Bryden gave a very worthy and interesting critique of what, in his opinion, was wrong with Bill C-227 which, for lack

of a better word, has become known as the “consecutive” sentencing bill.

Senator Bryden made much of the six principles of sentencing that we provided for in Bill C-41 many years ago. Those are: to denounce harmful conduct; to deter the offender and other persons from committing further offences; to separate offenders from society, where necessary; to assist in rehabilitating offenders; to provide reparation for harm done to victims; and to promote a sense of responsibility in offenders and acknowledgement of the harm done.

Senator Bryden implied, as often happens in arguments involving sentencing, that those who they want to be confined for a longer term of imprisonment are accused of vengeance as being their prime motive. That is an uncharitable view of any opposition to the status quo.

It concerns me how the legal profession joins arms and circles like Arctic muskox when someone who is not from the judiciary or the legal profession suggests that changes should be made to the statutes which deal with punishment for offences committed. That comment is a prelude to my remarks because, although I have spent many years in the legislature and in other places, not as a lawyer, I must say that have “hatched” a few of them in my family.

**Senator Cools:** Hatched?

**Senator Taylor:** If you sit on an egg long enough, it hatches.

My point is that the mood of the public is recognized by the courts. After all, a few hundred years ago we used to hang people for stealing sheep. I doubt that it was the lawyers who removed that provision from that law. The public realized that hanging someone for stealing sheep was too rough a punishment.

This bill deals with consecutive sentencing. Senator Bryden suggested that the bill is inconsistent with the principles of sentencing. Honourable senators, I just read those six principles and I see nothing in those six principles which would be adversely affected by consecutive sentencing. That principle certainly denounces harmful conduct and deters the offender. It separates offenders from society. The only question it raises might be in connection with the rehabilitation of offenders. The present system of concurrent sentences assumes that the person will be rehabilitated after a life sentence, which today works out to 25 years. Rehabilitation after consecutive sentencing would probably be just as effective under this proposed provision. I cannot see how these changes would make a big difference. Criminals would continue to be returned to the community, but passage of this bill would certainly slow that process down. That is the whole idea behind consecutive sentencing.

Senator Bryden also questioned the process by which the bill was passed in the House of Commons. The bill was definitely not cobbled together, as he suggests. The bill was the subject of lengthy debate in the House, a debate spanning four years along with several days of committee hearings. We often accuse the other place of not getting much done, but we must all readily agree that, in four years, they are bound to get something done. That process spanned the last election. To say that the bill was cobbled together is a rather loose statement.

Consecutive sentencing is rare today, leading to circumstances where victims are reluctant to come forward because they know that, no matter what they say, not a single day will be added to the sentence of the offender. In other words, it holds up the natural progress of justice if a repeat offender is before the courts. Potential witnesses who have knowledge of another offence, will say to themselves, "What is the use of coming forward? What I say will in no way affect the sentence. It might be a consecutive sentence. Big deal". There is a danger in thinking that consecutive sentencing actually works against justice and that people who should come forward on a multiple rapist or multiple murderer would not do so. Why would a potential witness stick his or her neck out and come forward as a witness or as a complainant when the person knows it will not change the sentence? They know the sentence will be served concurrently. In fact, there is the danger that, when the offender is released, he or she may not be rehabilitated as well as they should be and that they may then take their vengeance out on society.

Currently, the judge has the discretion to impose a consecutive rather than a concurrent sentence. This bill will not remove any discretion from the judges. If anything, if this bill is passed, gives judges will have more leeway in sentencing. Some people have argued that it handcuffs judges. I do not think that is true.

Another complaint we hear is: "How can you give a person two life sentences when the person only has one life?" Honourable senators, that is playing with words. That is a bit of fancy rhetoric because we do not impose "life" sentences. What is imposed is a term of imprisonment of, say, 20 or 25 years. There is no such thing as a life sentence. Senator Nolin is shaking his head. I am glad I got his attention. It involves semantics or playing with words to say that you cannot impose life sentences. If you cannot impose life sentences, you can certainly impose consecutive 25-year sentences. That is a way of getting around the language.

The other argument is relates to the principle of deterrence. Consecutive sentencing is used in cases of multiple rape and multiple murder. There is no deterrent now for either a rapist or a murderer who has already committed two or three violent offences. Nothing will deter that offender from committing offence number three, four, five, six, or seven. There is almost a incentive for a person who is not mentally balanced to continue this criminal activity because the sentencing that he or she will receive will be no worse than if they had stopped after committing the first two offences. In other words, over a period of time, under our present system, we are encouraging the commission of multiple rapes or murders.

Our society has done away with capital punishment. I agree with that for a number of reasons, but I shall not get into that debate. However, so-called life imprisonment is nothing but a halfway house between capital punishment and letting the person out in society after just a slap on the hand, hoping that they have been rehabilitated.

● (1710)

Consecutive sentencing recognizes the fact that a convicted person will spend more time in that halfway house called a jail

than they would otherwise. I do not see how that in any way strikes at the principles of justice that some of my legal friends speak about.

Government has recently allowed for changes in the right to parole in regard to the faint hope clause. If we can tamper with it a bit, why not tamper with it more and address consecutive sentencing.

Honourable senators, this is a sensible bill with a tremendous amount of logic behind it. I have a daughter who is a law professor and she says there is no relationship between the law and logic. In this particular case, I think she is absolutely right. The logic behind this proposed legislation is that if there are sentences and if we can have one 25-year or 20-year sentence, surely we can have a second or a portion of a second. Logic is witness to that.

**Hon. Anne C. Cools:** Honourable senators —

**The Hon. the Speaker:** Honourable senators, does any other honourable senator wish to speak? If not, I must advise that if the Honourable Senator Cools speaks now, her speech will have the effect of closing the debate on the matter.

**Senator Cools:** Honourable senators, I should like to thank Senator Taylor for his remarks of the past few minutes. I shall be very brief in my remarks.

Albina Guarnieri is an outstanding and long-serving Liberal from the Toronto area who is very well known for her work supporting the Liberal Party of Canada in Toronto and in the environs. I thought it was important that that fact should be known in this chamber. Ms Guarnieri is a person for whom I have great respect and for whom I hold enormous affection.

In defence of Albina Guarnieri, I think her own work, strong character and loyalty to the causes that she espouses speak for themselves.

Honourable senators, when Senator Bryden spoke on April 11, I asked him a few questions and he responded. At that time, I reserved the right to raise a point of order. I declined to raise a point of order in the future as time went by because it was impossible to assemble everyone together at the same time.

For the record, I should like to say that following his speech on April 11, 2000, I rose and asked Senator Bryden some questions because in his speech he asserted that he had said that I had been exaggerating. I asked him at page 1100 of the *Debates of the Senate*:

Could the senator tell me how I have been exaggerating anything to this chamber?

Senator Bryden responded by saying:

Honourable senators, if you look at the transcript I believe you will see that I never used the word "exaggerate".



He continued later in the paragraph to say:

Once again, I very carefully prefaced my remarks by saying "in my opinion".

I invite the honourable senator to check the Hansard.

Honourable senators, I was pretty clear that I had heard accurately, and I put the question again to Senator Bryden, asking him to clarify. Senator Bryden again responded, at page 1100 of the *Debates*:

Once again, though, I may be wrong but I do not think even there I used the word "exaggeration".

When I was discussing what happened in this chamber, I twice referred to Senator Cools by name because I was quoting her....If Senator Cools has drawn another impression, that is unfortunate, but that certainly is what I intended to say and I believe that is what I said.

At that point, I said to the chamber:

I will review the record with some care, but what I heard, as sponsor, was the honourable senator talking about the bill in this chamber.

Honourable senators, I did review the record of Senator Bryden's speech and, at page 1098, I found that this is what he said:

Honourable senators, that is what we were told in earlier proceedings in this chamber, but it is not completely accurate. When one reads the testimony heard by the committee in the other place, one learns something different. In his testimony, David Daubney said that in fact...

Senator Bryden then continued to quote from David Daubney. He also continued for another few sentences and then said, on page 1098:

Honourable senators, I was most struck by the fact, once again, that the sponsor is exaggerating the effect of this bill.

Honourable senators, I intend to do little about this other than to let the record clearly show that what I heard is what Senator Bryden actually said. Perhaps Senator Bryden may wish to respond to that in the future or, perhaps, make some sort of clarification.

I asked him twice. He said he did not say I was exaggerating. I looked at the record. The record clearly indicates that was the case.

Having said that, honourable senators, I should like to move along and to add that I think it is important that when we talk about other colleagues, especially of the same side, the same colleagues in the other chamber, even when we disagree we should be mindful that people expect their work to be respected even when senators may disagree.

At the end of the day, if we say that we are colleagues and members of the same caucus, that caucus membership does carry with it a set of responsibilities that convey a certain amount of respectful deference, even in disagreement.

Honourable senators, the debate here has been quite rounded and sufficiently full. There is evidence before us all that something in respect of these questions needs correction. I understand that many honourable senators believe that this, perhaps, is not the appropriate, best or most efficient way to make those corrections. However, it is my opinion that if senators feel strongly that they wish to amend the bill, they should bring forward the amendments. I am quite confident, as the sponsor of the bill, that the Senate committee will view those amendments with great consideration and they will be well received. I think that debate is very important and that the debate must go on.

Having said that, honourable senators, I shall end my remarks so that the question can be properly put.

**The Hon. the Speaker:** Honourable senators, it was moved by the Honourable Senator Cools, seconded by the Honourable Senator Watt, that this bill be read the second time.

Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, I simply wanted to say that I fully support this bill introduced by Senator Cools.

[English]

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Cools, bill referred to the Standing Senate Committee on Legal and Constitutional Affairs.

[Translation]

• (1720)

## CANADIAN BROADCASTING CORPORATION

INQUIRY—DEBATE ADJOURNED

**Hon. Marie-P. Poulin** rose pursuant to notice of Thursday, May 11, 2000:

That she will call the attention of the Senate to the Canadian Broadcasting Corporation.

She said: Honourable senators, in the last few days, there have been reports that the Canadian Broadcasting Corporation intends to embark on a radical change of direction by reducing its regional production from coast to coast, cutting back staff in several offices, and putting the savings into projects for national broadcast.

It is surprising to learn that our public broadcaster is thinking of reducing its overall hours of Canadian production at the very time when communications are exploding, when technical convergence is multiplying strategic alliances, when the Internet is not only giving us access to information of all sorts from around the world, but is also a springboard to the world for a variety of Canadian productions from such places as Newfoundland, Quebec, Saskatchewan and the Yukon. The Senate has already published two reports on this communications explosion. These reports are entitled "Wired to Win I" and "Wired to Win II." All the witnesses who appeared before the senators involved in this special study repeated that it was not clear where technical convergence would lead us, but that there was no doubt that the future lay in the content.

Honourable senators, it is still more surprising to learn that our public broadcaster is contemplating cutbacks to its regional production at a time when G-8 member states, and the members of the Francophonie, are discussing the importance of respecting, promoting and protecting cultural diversity in the context of globalization. Is this not the very essence of our country? Canada is made up of small groups spread about over a huge area. Canada is not a homogeneous country. It is our diversity that has enabled us to develop tolerance and respect for differences. This diversity is a living entity, not something static. In coming years, it will become enriched, or impoverished. Our cultural diversity will be enriched by our coming to know each other through CBC television, both English and French. Yes, Canadians want to come to know each other through their public television network.

[English]

Honourable senators, the Standing Committee on Canadian Heritage in the other place was told on Tuesday that CBC English television is in an identity crisis, that CBC English television is in a financial crisis, and that the CBC will deal with it.

All Canadians want a renewed and revised CBC. I wish the Board of Directors the necessary discernment to make the right choices so that Canada will be better served from coast to coast to coast.

I also heard the representative of English television state that the proposal to reduce the number of hours produced by English television across the country has been on the drawing board for 15 months. So much has happened in the last 15 months in the field of communications; more specifically, at the CBC itself, with the arrival of a new CEO. When Mr. Robert Rabinovitch was appointed to the CBC, the entire communications industry rejoiced. He is well respected as an experienced public servant and a successful businessman, and he is known for his commitment to public broadcasting.

Honourable senators, I believe that Mr. Rabinovitch has the required values and stamina to lead our Canadian public broadcaster into the 21st century. When one leads, one needs a team, sometimes even an army. I was particularly impressed to hear him say this week that he had every confidence in his staff. He knows that each program is only as good as its idea and its production. He knows that every CBC piece of news will be as objective, balanced and informative as the reporters will feel respected and supported, because he arrives at a particularly challenging time.

Every employee of this creative organization and news organization that is the CBC in every location of the country has seen a colleague lose his or her job every year since the mid-1980s. All of us in this chamber have enough senior management experience to know what 16 years of instability can do to an organization. Our public broadcaster is an organization totally dependent on creativity and innovation, on dedication, on professionalism, across the country.

How can the small teams in, let us say, Moncton, Chicoutimi, Windsor, Regina or Iqaluit continue to want to be the best in their radio and television service to Canadians in their locality?

Honourable senators, remember when we used to call the CBC the "Mother Corp." Maybe the time has arrived for a new CBC CEO to manage our public broadcaster like a father — not an overprotective father because this makes for future weak adults; and not an ambivalent father since this makes for unclear goals and rules. Rather, we need a grooming father who can ensure a variety of opportunities for the development of the many skills required in the production of television and radio programs.

How many of you, honourable senators, watch and laugh with *This Hour Has 22 Minutes*? It was developed 10 years ago in a very small CBC location in the Atlantic provinces. We need a grooming father for all of Canada to ensure a variety of opportunities for the development of Canadian talent from coast to coast to coast.

We are all old enough to remember Anne Murray singing and strumming her guitar in a small CBC studio in the Atlantic provinces 35 years ago.

• (1730)

We need a grooming father, a balanced father, encouraging and demanding at once, for his most valuable resource — CBC staff. On the one hand, he must recognize excellence, such as good interviews and outstanding visuals, but, on the other, he must reject mediocrity, such as unethical or inappropriate on-air comments.

Honourable senators, on the one hand, we need a balanced father for all of Canada, offering two public television services in the English language and two public television services in the French language, services called Newsworld and RDI. All programming is broadcast naturally, as in the American model. On the other hand, we need services called CBC television and La télévision de Radio-Canada, where some programming is broadcast locally and some nationally, as in the BBC model.



Honourable senators, we need not only a grooming father, not only a balanced father, but a smart father. This is an era of "smart" buildings, "smart" communities, where everyone and everything is connected. Why not a smart CEO who can link the CBC to other cultural agencies like the NFB and the NAC; link CBC to small and large private ventures in small and large communities; link CBC to colleges and universities for training because of the need in the new media? We need a CEO to link the old and the new media; rural and urban Canada; the majority and the minority groups; English-speaking and French-speaking Canadians. This is what local television capacity will ensure.

[Translation]

Honourable senators, our public broadcaster is like a tree. The more vigorous and well-nourished its roots, the lovelier its foliage. The more the employees and programs are rooted right across Canada, the more successful its national programming. What is more, the very identity of CBC and Radio-Canada will rise to the surface. A public service, yes! A public service that informs, enlightens and entertains.

[English]

**Hon. Joan Fraser:** Honourable senators, would the Honourable Senator Poulin accept one short question?

**Senator Poulin:** Yes.

**Senator Fraser:** Honourable senators, I was struck by Senator Poulin's remark about the need for roots in any organization of this nature. If the roots are not strong, the tree will not be strong.

I know that Senator Poulin has vast personal experience in this field. At least in the domain of news, would the honourable senator consider local news-gathering operations to constitute those roots?

**Senator Poulin:** The Honourable Senator Fraser also has a journalistic background. She knows that those operations are essential. Not only must every station have the capacity to identify and gather stories, but they must also have the capacity to produce them.

The whole perspective must be in the context of the news as it is going on. Given the vast expanse of this country, it is impossible for a person sitting in one city to have any sense of the background and the development of a news story in another locality.

**Hon. Nicholas W. Taylor:** Honourable senators, perhaps Senator Poulin would permit another question.

The major thrust of the attack on the CBC seems to be the shutdown of regional news coverage. There are areas in Canada where we are inundated with news coverage. I can mention Calgary, Edmonton, Toronto and Vancouver. Is there any way of getting the message through to the CBC that we do not need another regional news service in big cities where three or four networks are already operating? We do need them, however, where there is no competition. In other words, CBC can serve a

national purpose by catering to Canadians who will not otherwise have access to regional news.

**Senator Poulin:** The honourable senator actually asked three questions. He is a concise person as usual, and I am honoured to answer the questions.

First, is there a place in this country for both a private and a public news-gathering service in certain big cities? My answer is yes, absolutely. The nature of professional news-gathering might use the same process, but the objective is not the same between a public broadcaster and a private broadcaster.

What differentiates the quality of the news between Canada and certain other countries that have no public broadcasting? It is the level of ethics in journalism. Absolutely, even in large centres, we have a place for the balanced approach of both private and public broadcasting.

There is the matter of certain centres where there are no other services. For instance, in all our northern services, the native people are served with a well-established, very articulate team. In many northern regions, there is no other service. That is where we see and live the true essence, the true *raison d'être*, of that public broadcaster.

The third question implied is whether we, as a country, can compete with entertainment or news that comes from other countries, for instance, from our neighbour the United States. I say yes, because Canadians want to recognize themselves in their public broadcaster.

Although, at times, it is fun to be entertained with programming from other countries, it is necessary to be informed and entertained by our own programming.

On motion of Senator Bolduc, debate adjourned.

## LEGAL AND CONSTITUTIONAL AFFAIRS

MOTION TO AUTHORIZE COMMITTEE TO MEET  
DURING SITTING OF THE SENATE WITHDRAWN

On Motion No. 70:

That the Standing Senate Committee on Legal and Constitutional Affairs have power to sit at 3:30 p.m. on Wednesday, May 17, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I ask leave to withdraw Motion No. 70, as it is no longer relevant.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Motion withdrawn.

## SOCIAL AFFAIRS, SCIENCE AND TECHNOLOGY

MOTION TO AUTHORIZE COMMITTEE TO MEET  
DURING SITTING OF THE SENATE WITHDRAWN

On Motion No. 72:

That the Standing Senate Committee on Social Affairs, Science and Technology have power to sit at 3:30 p.m. on Wednesday, May 17, 2000, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I ask leave to withdraw Motion No. 71, as it is no longer relevant.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

Motion withdrawn.

• (1740)

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

MOTION TO AUTHORIZE COMMITTEE TO MEET  
DURING SITTINGS OF THE SENATE WITHDRAWN

On Motion No. 72:

That the Standing Senate Committee on Energy, the Environment, and Natural Resources have power to sit at 4:30 p.m. on Tuesday June 6 and June 13, 2000 for the purpose of hearing witnesses on its study of Bill S-20, to amend and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**Hon. Noël Kinsella (Deputy Leader of the Opposition):** Honourable senators, I would argue against the Senate adopting this motion. The subject of this study is not a government bill. This courtesy is extended generally when there is a government bill before a standing committee, and a special witness, such as a minister, is scheduled to appear before the committee. In the past, in those special circumstances, the Senate has allowed a committee to meet even though the Senate may then be sitting. None of those criteria is met in this case, and I would urge honourable senators not to adopt this motion.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I understand the comments made by Senator Kinsella. We have no special reason before us as to why senators should be absent from the chamber in order to attend a meeting of a committee.

Perhaps the Honourable Senator Taylor would be prepared to adjourn the debate in order to give Senator Spivak an opportunity to justify this procedure. At this point, however, I am in agreement with Senator Kinsella.

**Hon. Nicholas W. Taylor:** I must confess, honourable senators, that I went through the motions like a sleepwalker. I did not really think this motion through. Both senators have made a valid point. Senator Spivak and I have discussed this matter. We have scheduled witnesses to appear before the committee at some point in the future. However, we have some time between now and then, and I suspect those appointments can be moved around. In light of the comments made by both honourable senators, I shall contact Senator Spivak during our break to see if we can rearrange our schedule.

**Senator Hays:** Does the Honourable Senator Taylor wish to withdraw the motion? There is time to give notice and put it on Order Paper again.

**Senator Taylor:** I would ask leave to withdraw the motion.

**The Hon. the Speaker:** Is leave granted to withdraw the motion, honourable senators?

**Hon. Senators:** Agreed.

**Senator Hays:** On a matter of clarification, some honourable senators are confused about whether debate is adjourned or whether this motion has been withdrawn.

My understanding, honourable senators, is that the motion has been withdrawn and it will go off the Order Paper. Even though the motion was proposed by Senator Spivak, Senator Taylor, the deputy chair of the committee, has moved the motion. We have had a debate, and the result of the debate is that a disposition has been expressed on the part of the opposition and the government deputy leaders that it is inappropriate to deal with this without justification. Senator Taylor asked that it be withdrawn, therefore, it will not be on the Order Paper, it will be withdrawn.

Is Senator Graham in agreement with that procedure?

**Hon. B. Alasdair Graham:** The motion was in Senator Spivak's name. I thought that perhaps the most convenient, appropriate and conventional way in which to handle this, if there is some concern, is to allow the matter to stand rather than withdraw the motion. Subsequently, when we resume our sitting, the chair of the committee could provide an appropriate explanation.

**Senator Hays:** Honourable senators, I have no problem in hearing from Senator Taylor, as the mover of the motion, to the effect that he wishes the motion to be withdrawn. We can see from the text of the motion that there is plenty of time to move another motion at a later date and to justify the moving of such a motion, as has been suggested by Senator Kinsella, with whom I have agreed.



As I understand the matter, we have agreed that the motion shall be withdrawn and we can revert to Government Notices of Motion.

Motion withdrawn.

**ADJOURNMENT**

Leave having been given to revert to Government Notices of

Motions:

**Hon. Dan Hays (Deputy Leader of the Government)**, with leave of the Senate and notwithstanding rule 58(1)(h), moved:

That when the Senate adjourns today, it do stand adjourned until Tuesday, May 30, 2000, at 2 p.m.

The Senate adjourned until Tuesday, May 30, 2000, at 2 p.m.

**THE SENATE OF CANADA**  
**PROGRESS OF LEGISLATION**  
**(2nd Session, 36th Parliament)**  
**Thursday, May 18, 2000**

**GOVERNMENT BILLS**  
**(SENATE)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
S-3	An Act to implement an agreement, conventions and protocols between Canada and Kyrgyzstan, Lebanon, Algeria, Bulgaria, Portugal, Uzbekistan, Jordan and Luxembourg for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income	99/11/02	99/11/24	Banking, Trade and Commerce	99/12/07	0	99/12/16		
				Foreign Affairs	99/12/09	0			
S-10	An Act to amend the National Defence Act, the DNA Identification Act and the Criminal Code	99/11/04	99/11/18	Legal and Constitutional Affairs	99/12/16	2	00/02/09		
S-17	An Act respecting marine liability, and to validate certain by-laws and regulations	00/03/02	00/04/04	Transport and Communications	00/05/09	2	00/05/17		
S-18	An Act to amend the National Defence Act (non-deployment of persons under the age of eighteen years to theatres of hostilities)	00/03/21	00/04/04	Foreign Affairs	00/05/04	0	00/05/16		
S-19	An Act to amend the Canada Business Corporations Act and the Canada Cooperatives Act and to amend other Acts in consequence	00/03/21	00/04/06	Banking, Trade and Commerce					
S-22	A First Act to harmonize federal law with the civil law of the Province of Quebec and to amend certain Acts in order to ensure that each language version takes into account the common law and the civil law	00/05/11	00/05/18	Legal and Constitutional Affairs					

**GOVERNMENT BILLS**  
**(HOUSE OF COMMONS)**

No.	Title	1st	2nd	Committee	Report	Amend.	3rd	R.A.	Chap.
C-2	An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts	00/02/29	00/03/28	Legal and Constitutional Affairs	00/04/13	0			
C-4	An Act to implement the Agreement among the Government of Canada, Governments of Member States of the European Space Agency, the Government of Japan, the Government of the Russian Federation, and the Government of the United States of America concerning Cooperation on the Civil International Space Station and to make related amendments to other Acts	99/11/23	99/12/01	Foreign Affairs	99/12/09	0	99/12/14	99/12/16	35/99



C-6	An Act to support and promote electronic commerce by protecting personal information that is collected, used or disclosed in certain circumstances, by providing for the use of electronic means to communicate or record information or transactions and by amending the Canada Evidence Act, the Statutory Instruments Act and the Statute Revision Act	99/11/02	99/12/06	99/12/09	00/04/13	5/00			
			Subject matter 99/11/24						
		99/12/06	Social Affairs, Science and Technology	2					
C-7	An Act to amend the Criminal Records Act and to amend another Act in consequence	99/11/02	99/11/17	Legal and Constitutional Affairs	99/12/08	00/03/30	1/00		
C-9	An Act to give effect to the Nisga'a Final Agreement	99/12/14	00/02/10	Aboriginal Peoples	00/03/29	00/04/13	7/00		
C-10	An Act to amend the Municipal Grants Act	00/03/28	00/04/10	National Finance	00/05/04	0	00/05/09		
C-13	An Act to establish the Canadian Institutes of Health Research, to repeal the Medical Research Council Act and to make consequential amendments to other Acts	00/03/30	00/04/04	Social Affairs, Science and Technology	00/04/06	0	00/04/10	00/04/13	6/00
C-20	An Act to give effect to the requirement for clarity as set out in the opinion of the Supreme Court of Canada in the Quebec Secession Reference	00/03/21	00/05/18	Special Committee of the Senate on Bill C-20					
C-21	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	99/12/14	99/12/15	-	-	99/12/16	99/12/16	36/99	
C-22	An Act to facilitate combatting the laundering of proceeds of crime, to establish the Financial Transactions and Reports Analysis Centre of Canada and to amend and repeal certain Acts in consequence	00/05/09 (withdrawn 00/05/11)	00/05/17	Legal and Constitutional Affairs (withdrawn 00/05/18)					
		00/05/11 (reintrodu- ced)		Banking, Trade and Commerce (00/05/18)					
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C-26	An Act to amend the Canada Transportation Act, the Competition Act, the Competition Tribunal Act and the Air Canada Public Participation Act and to amend another Act in consequence	00/05/16							
C-29	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2000	00/03/23	00/03/28	-	-	00/03/29	00/03/30	3/00	
C-30	An Act for granting to Her Majesty certain sums of money for the public service of Canada for the financial year ending March 31, 2001	00/03/23	00/03/28	-	-	00/03/29	00/03/30	4/00	

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C-247	An Act to amend the Criminal Code and the Corrections and Conditional Release Act (cumulative sentences)	99/11/02	00/05/18	Legal and Constitutional Affairs					

C-276	An Act to amend the Competition Act, 1998 (negative option marketing)	00/05/18
C-445	An Act to change the name of the electoral district of Rimouski—Mitis	00/05/09
C-473	An Act to change the names of certain electoral districts	00/04/10

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S-4	An Act to provide for judicial preauthorization of requests to be made to a foreign or international authority or organization for a search or seizure outside Canada (Sen. Nolin) <i>(Dropped from Order Paper pursuant to Rule 27(3) 00/05/11)</i>	99/11/02							
S-5	An Act to amend the Parliament of Canada Act (Parliamentary Poet Laureate) (Sen. Gratstein)	99/11/02	00/02/22	Social Affairs, Science and Technology					
S-6	An Act to amend the Criminal Code respecting criminal harassment and other related matters (Sen. Oliver)	99/11/02	99/11/03	Legal and Constitutional Affairs					
S-7	An Act respecting the declaration of royal assent by the Governor General in the Queen's name to bills passed by the Houses of Parliament (Sen. Lynch-Staunton)	99/11/02	00/02/22	Privileges, Standing Rules and Orders					
S-8	An Act to amend the Immigration Act (Sen. Ghitter) <i>(Dropped from Order Paper pursuant to Rule 27(3) 00/05/04)</i>	99/11/02							
S-9	An Act to amend the Criminal Code (abuse of process) (Sen. Cools)	99/11/03	00/05/04	Legal and Constitutional Affairs					
S-11	An Act to amend the Criminal Code to prohibit coercion in medical procedures that offend a person's religion or belief that human life is inviolable (Sen. Perrault, P.C.) <i>(Dropped from Order Paper pursuant to Rule 27(3) 00/02/08)</i> <i>(Restored to Order Paper 00/02/23)</i>	99/11/04							
S-12	An Act to amend the Divorce Act (child of marriage) (Sen. Cools)	99/11/18							
S-13	An Act to assist in the prevention of wrongdoing in the Public Service by establishing a framework for education on ethical practices in the workplace, for dealing with allegations of wrongdoing and for protecting whistleblowers (Sen. Kinsella)	99/12/02	00/02/22	National Finance					



S-15	An Act to amend the Statistics Act and the National Archives of Canada Act (census records) (Sen. Milne)	99/12/16
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S-20	An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada (Sen. Kenny)	00/04/05 00/05/09 Energy, the Environment and Natural Resources
S-21	An Act to protect heritage lighthouses (Sen. Forrestal)	00/04/12

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CANADA

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• 36th PARLIAMENT

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• NUMBER 59

OFFICIAL REPORT  
(HANSARD)

**Tuesday, May 30, 2000**

—  
**THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER**



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(Daily index of proceedings appears at back of this issue.)

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## THE SENATE

Tuesday, May 30, 2000

The Senate met at 2:00 p.m., the Speaker in the Chair.

Prayers.

[Translation]

### VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, before I call for Tributes, I should like to draw your attention to some distinguished visitors in our gallery. We are honoured to have the presence of His Excellency Mr. Dieng Boubou Farba, Speaker of the Senate of the Islamic Republic of Mauritania, accompanied by the Ambassador and two honourable senators,

On behalf of all honourable senators, I wish you welcome to the Senate of Canada.

[English]

• (1410)

### THE UNKNOWN SOLDIER

#### TRIBUTES

**Hon. B. Alasdair Graham:** Honourable senators, there is a place called Passchendaele in southwest Belgium that is today marked by a pastoral, prosperous serenity and that is difficult to imagine as a killing ground of indescribable horror a little over eight decades ago. The large number of war cemeteries that encircle it belie the magnitude of the slaughter, a slaughter on a killing field which can best be described as a malevolent swamp. It was there, on what was a relatively small battlefield, that the Great War reached its nadir of horror.

It was there that the grandson of Louis Joseph Papineau, Talbot Papineau, who had signed up with the Princess Pats in 1914 and served with the greatest valour through the awful carnage on the Western Front, died tragically as his company went over the top to face the final battle.

On the eve of his death, and perhaps in anticipation of his own mortality, he wrote more lightheartedly than ever — because his habit was to reveal none of the horror to those close to him. He wrote to a dear friend back home: “I never felt better in my life,” he assured her. “This morning we had a church service and sang ‘Nearer My God to Thee’ ...similar to how we used to sing as kids at Montebello.” He went on, “...we will find a fund of buried affection again after the war.”

Less than a week after his reminiscences, on October 30, 1917, Talbot Papineau was blown up by an enemy shell. No one saw him fall. No one knew if he had drowned. No one knew where his body lay. No one ever found even his small identity disk or his puttees or the brass buttons with the Maple Leaf that adorned his uniform.

[Translation]

The country mourned the death of Talbot Papineau, a passionate man, a brilliant man, representing the very spirit of a bilingual and bicultural Canada.

[English]

Tributes poured in from across the then Dominion of Canada. Perhaps the *Daily Mail* of London put it best. Saluting him as a “Lost Leader,” the editorial said, in part, “May Canada learn from his death the lessons he would have taught had he lived.”

Talbot Papineau spelled out these lessons in an open letter to the eloquent Henri Bourassa a year before his death.

[Translation]

As I write, French and English Canadians are fighting and dying side by side.

[English]

He continued, “Is their sacrifice to go for nothing — or will it cement a foundation for a true Canadian nation, a Canadian nation independent in thought. Independent in action?”

Honourable senators, I quoted from this wonderful letter to Bourassa several years ago in this chamber as we commemorated yet another Remembrance Day. I thought of them and their eloquent author, so sadly lost, no one knew where, many times over the moving and historic events of the last week. I thought of the Unknown Soldier, as we all did: A young hero we had lost; a young hero we, as a nation, have now properly put to rest; a young, nameless hero whose address for 80 years had been simply Northern France, Grave 7, Row E, Plot 8; an unknown soldier who likely died as one of the 3,598 Canadians lost at Vimy Ridge, although even this we do not know for certain, for he was known only unto God.

He was one of almost 28,000 Canadians who perished in war in the last century with no known grave; one of the 66,000 Canadians of World War I who paid the highest sacrifice the best and brightest of that war to end all wars — bodies blown away, mere fragments buried, sometimes an ankle bone and a ga mask hurriedly interred, sometimes beneath a simple wooden cross, as young Talbot may have been. But unknown, a corps washed up in the ghastly spring of Flanders in 1918, known only unto God.

Who is to know the lost dreams of those who only days before had lived, felt dawn and saw sunset glow; of dreams abandoned of families never raised; of children never known; of lives never lived; of lost promises and friends and lovers and wives; of pianos and fiddles never again played; of skates never again tied; of parents never again known; of fields never again tilled; of poetry never again read; of lonely woods never again explored; of rivers never again fished or crossed; of mountains never again climbed.



Over the past week, Canadians welcomed the exhumed body of the nameless soldier who died on the French battlefield far from home. With the deepest solemnity, they approached his casket just down the corridor in the Hall of Honour. With the deepest passion, many prayed and cried and spoke of a past too many had forgotten. They brought their children and their children's children to honour this ordinary Canadian who had died too young, and they remembered.

Over 20,000 lined the streets of Ottawa on Sunday to pay their respects to the former resident of Grave 7, Row E, Plot 8. They paid their respects as well to the sacrifice of generations. The deep silence and pathos that filled the air of the parade route to the final resting place, of the Unknown Soldier was broken as the first row of veterans came walking, came striding, came marching along behind the flag-draped casket. The intermittent clapping of the crowd broke into a thunderous and sustained ovation as row upon row of veterans — the march of those who have fought so hard to bring this unknown son back to a people who so desperately needed to be part of him. That thunderous applause would have made the late Chuck Murphy's eyes well with tears because, as Dominion President of the Royal Canadian Legion, Chuck Murphy worked so hard to bring this momentous event to reality.

With the entombment of this lost leader, son, friend and hero, a nation wept with quiet pride at a new miracle of discovery that now a part of us has returned from a lonely grave; that now, this vital, this tragic and this ever so meaningful part of us, the remains of an unnamed soldier, signifying the ultimate sacrifice of 116,000 of our country men and women, yes, that ever so meaningful part of all of us, in one of our proudest moments, has been returned to all Canadians, forever.

**Hon. J. Michael Forrestall:** Honourable senators, General Sir John Hackett, renowned soldier and scholar, once said in an interview that "the whole essence of the military profession is not to be the slayer, but to be the slain. You offer yourself up to be the slain rather than set yourself up as a slayer."

Canadian society, like others, takes its youngest and brightest minds and welcomes them into the Armed Forces to serve where and when Canadian society tells them to serve and to sacrifice themselves when necessary for the greater good of Canadians. In return, they get — or at least they are supposed to get — their own very special society, public support and veneration when they die. It is a contract of unlimited liability that very few are inclined to sign.

• (1420)

Today I wish to join my colleagues in paying tribute to Canada's Unknown Soldier who has been, after 80 years, brought home to his native land and given what I consider to be a very fitting and apt ceremony here in our nation's capital. As has been mentioned, he represents the 20,000-plus souls who remain unidentified and lost to their families' embrace forever, due to their untimely loss in Canada's wars.

This blessed Unknown Soldier comes to us from Vimy, where he and many other Canadians sacrificed themselves for their

fellow men and women in mortal combat. It is the greatest gift that one person can give to another. Through that gift — a selfless gift of life — our lost children granted us a nation to honour, to nurture and to protect. It is a point made in the Gospel of John 15:13, which reads:

No greater love than this, that someone should lie down his life for his friends.

It is a soldier's requiem. It is appropriate.

Now it is time to live up to our portion of the long-hallowed contract between the soldier and his employer, the people.

We have brought one Unknown Soldier home to the heart of Canada and Canadian society to cherish and protect our lost sons' and daughters' memories. It is a debt of honour that all Canadians must pay, and by the crowd that gathered on Sunday and the many, many children in that crowd, I believe in my heart that it will be repaid in full year after year. As long as there is a Canada, we will remember them. May his soul, and all the souls of the eternal dead, rest in peace through God.

**Hon. Raymond J. Perrault:** Honourable senators, we have at long last received the body of our slain son. It is a time of sadness and reflection for the entire nation — for mothers and fathers who lost sons and daughters in wars, for mothers and fathers who have sons and daughters yet to be introduced to the horrors of war, God forbid, and for every Canadian citizen who can conceive of the sacrifice our slain son made on our behalf.

We may wonder what he and others like him endured in those final minutes. Was he able to use his weapon in attack or defence? How old was he? Where in Canada did he live? Did he understand the causes for which he died? Did he suffer, or was his death mercifully swift?

We can wonder about these things, but we can be absolutely certain that he died before he had even begun to live. We can be sure that his potential for good was never realized. How many outstanding potential prime ministers and leaders in every section of society were left on that battlefield?

We can be certain that he never enjoyed his share of sunrises and sunsets; that he was denied his share of loving and being loved. We know that his dying brought unrequited grief to those who knew him, a grief made even more intense by the obliteration of his identity on the battlefield.

Honourable senators, we have received our slain son back to the land of his birth. We can agree that he represents every man and woman who died and went missing fighting in Canada's wars, people with ethnic backgrounds in many communities and different political backgrounds, but I submit that we must regard our unknown Canadian soldier in a larger context. He stands as a tragic symbol of all those who die and are obliterated in the conduct of wars, wherever they occur. Even as we meet here, young men and women are being rendered dead and unknown in conflicts now occurring on this planet. Genocide is taking place. With them, surpassing their numbers, are men, women and children, all innocents, slain and extinguished by the juggernauts of war that play no favourites in their death dealing.

At this precarious time in our history, our concern for those caught in battle must extend beyond national boundaries. In the best of all possible worlds, there would be no unknown dead soldiers or civilians. In our supposedly advanced state of civilization, we do not seem to have evolved to a point where we can see the ultimate futility of war, where we can dispense with political wars, territorial wars, religious wars, wars triggered by unscrupulous potentates.

We do not seem to have evolved to a point where we are united in our conviction that the only war worth fighting, the only war in which we all survive and thrive, is a common, international war against poverty, ignorance, starvation, disease and all the insidious forces that create disparity and despair.

The United Nations places this objective at the top of a formidable list of priorities, but the diminution, if not the elimination, of war continues to elude us and to remain the greatest challenge with which mankind must contend, at a time when our technological ability to destroy appears to surpass our ability to build a world in which all of its inhabitants survive in peace and dignity.

I believe that Canada's Unknown Soldier died hoping that the world would become a better place. Let his death, and the death of all those rendered unknown by the total brutality of war, be our challenge to volunteer for the real war in which the world emerges as a better place, in which every inhabitant is a proud survivor. It is a challenge to be accepted, a challenge worth fighting for in every sense, and a challenge that the Unknown Soldiers of the world would espouse if they were here with us again and had that opportunity.

#### THE LATE HONOURABLE E. DAVIE FULTON, P.C., O.C., Q.C.

##### TRIBUTES

**Hon. Lowell Murray:** Honourable senators, I rise to record with considerable sadness the death on May 22, in Vancouver, of the Honourable Edmund Davie Fulton. At the time of his death, Mr. Fulton was the senior Progressive Conservative Privy Councillor in the land, having been sworn into the cabinet of Prime Minister Diefenbaker on June 22, 1957.

Davie Fulton was a member of the House of Commons for Kamloops from 1945 to 1962 and again from 1965 to 1968. In the great debates of the post-war parliaments, which often turned on the rights of Parliament, Mr. Fulton honed his skills and made his mark as an outstanding parliamentarian. He served as Minister of Justice and Attorney General, Minister of Citizenship and Immigration, and Minister of Public Works in the Diefenbaker government.

Prime Minister Diefenbaker, whose lifelong passion was for a Canadian Bill of Rights, was generous in his acknowledgement of Mr. Fulton's strong hand in its drafting and in its progress through Parliament.

Mr. Fulton will also be remembered as chief Canadian negotiator of the Columbia River Treaty, as co-author of what later became known as the Fulton-Favreau constitutional amending formula, and for far-reaching reforms in criminal justice and correctional policy initiated under his leadership.

[ Senator Perrault ]

The Honourable Davie Fulton belonged to a generation of post-war parliamentarians, most of them veterans like him, whose service to Canada is one of our most cherished legacies. He was one of British Columbia's and Canada's most illustrious sons, and his country is in his debt.

**Hon. Raymond J. Perrault:** Honourable senators, I should like to join my remarks with those of the Honourable Senator Murray.

Davie Fulton was an outstanding Canadian and a great British Columbian. He made a major contribution to our province — a man of impeccable high standards of conduct. He suffered physical disabilities from time to time, and he was criticized most unfairly by a section of the media at one time in his career. Nevertheless, he overcame all of these negative influences and became a person who served this province almost to the end of his days in his work on behalf of Canada in the international commission and many other appointments.

He was also a member of the bench in the Province of British Columbia. He was a great man, a great politician and a great leader. We were opponents in one provincial election out there, but he was a good campaigner who fought a great campaign.

• (1430)

At times like this, it is nice to remind ourselves that virtues are not held by one party alone, that there are good people in all political parties. Despite the bonny battles that we had with Davie Fulton when he was in British Columbia, he was a thoroughly worthwhile opponent and an outstanding Canadian. We grieve his loss and extend condolences to his family.

#### THE LATE HONOURABLE MAURICE (ROCKET) RICHARD, P.C., O.C.

##### TRIBUTES

**Hon. Francis William Mahovlich:** Honourable senators I rise to speak on the passing of the Honourable Maurice Richard, P.C., C.M.

How many people in this world can start a riot? Rocket Richard could. How many people can win a hockey game when the manager predicts the player who will score the goal Mr. Richard did.

When asked whether there was a strategy for this, Mr. Richard said, "I never planned a play in advance. Whenever there was break, a chance at the net, I tried to pick a spot or tried to beat the goalkeeper. Everything I did was spontaneous, and every play made seemed to be different than the one before."

Starting a riot or winning a hockey game was a natural happening for Maurice Richard. The "Punch Line" was the name of the great threesome: Elmer Lach, "Toe" Blake and the Rocket. This line was formed by coach Dick Irvin. Later, Toe Blake would coach Maurice to five more Stanley Cups and seemed to understand Maurice Richard better than anyone.

Mr. Richard was the first player to score 50 goals in a season and the first to score 500 goals in a career. Maurice did not only lead the Montreal Canadiens, he led all the NHL alumni and he set the standard. We will all miss him.



As I reminisce about Maurice, my mind goes back to the first game that I played in the NHL. It was in 1957 and the Canadiens were at their best. The Toronto coach was Howie Meeker. He gave me strict orders not to let the Rocket get away. Honourable senators, I found out why they called him the Rocket. He was beginning to break away from me so I grabbed hold of him. It was like trying to hold on to a rocket that was just launched at Cape Canaveral. When I would not let go he turned and looked at me and, with those eyes gleaming like headlights, said, "Let's go, kid," and I said, "Yes, Mr. Richard."

In my son's book, *The Big M*, he tells of an experience that occurred during a warm-up at a hockey game at which Maurice Richard was the referee.

The team was skating around, firing shots on goal from the slot; I was doing just that when a crisp pass hit me on the fly. I can't remember my shot, or where it went, but from across the ice I saw that it was Rocket Richard who gave me the perfect pass. I get chills when I think about it.

In January, the *Winnipeg Free Press* voted the all-star team for the millennium. It was Bobby Hull, Wayne Gretzky and Gordie Howe for the first team. The second team was Frank Mahovlich, Mario Lemieux and Maurice Richard. I can hardly wait until the year 3000 for the next millennium all-star game in heaven. It will surely be Maurice Richard, in overtime, who will score the winning goal. That is my prediction.

Rest peacefully, Maurice. Au revoir.

[Translation]

**Hon. Pierre Claude Nolin:** Honourable senators, it is with some sadness that I rise today to speak on the death of someone I have considered my hero since early childhood.

The Montreal Canadien's Number 9 is no more. The notice of his death plunged millions of Canadians into mourning. Since Saturday, the many personal remembrances about the man known as "the Rocket" bear witness to the great mark he made in history and on the collective memory of Canadians of all generations.

The oldest will remember evenings spent following his exploits on *Hockey Night in Canada* on the radio or television. The youngest will have known him as a legend in professional hockey when players played the sport for the love and pleasure of it and not for money, a poor motivator.

However, despite the generation gap, all agreed that Maurice Richard personified determination, passion, courage and the very essence of hockey.

This prodigious player was born on August 14, 1921. He wore the tricolour Montreal Canadien's Number 9 sweater from 1942 to 1960. And why Number 9? Because his oldest daughter weighed nine pounds at birth. Today, the idol of young hockey fans is Number 99. In my day — and no doubt yours — it was Number 9. As a boy, I dreamt of wearing a Montreal Canadien's Number 9 sweater.

Quick and powerful, he had no match in the National Hockey League on offence. His style of game and his personality made

the Canadiens a real institution, which today is a symbol of national pride for many of us.

When he retired in 1960, the Captain of the Canadiens held some thirty NHL records, with more than half of them being achieved in playoff games. You will recall, honourable senators, that the playoffs did not last two months in those days. There were four teams, two series.

Five times he was named top scorer in the regular season. In the playoffs, he took part in 133 games, accumulated 126 points, scored 82 goals, 18 of them winning goals, and, finally, racked up seven hat tricks.

In the hearts of French Canadians, Maurice Richard was one of the greatest hockey players of all time. In effect a national hero, he was associated with the vibrant history of French Canadians at a time when the idols with whom we could identify were few and far between, and, unfortunately, not well known.

However, when the public discovered Maurice Richard's talent and unassuming but very warm nature, it identified with him spontaneously. For one of the first times, a French Canadian was making it in a sport few francophones had managed to break into. So it was that the Rocket became an all-time hockey hero and idol in the eyes of the public.

Thanks to him, hockey became the second religion of French Canadians, with Maurice Richard its god. The Forum riot of March 17, 1955 provided an indication of how strong this attachment was.

For many, this event signalled the beginning of the Quiet Revolution, which had been building since the mid-40s. I think it fair to say that the name of Maurice Richard belongs quite naturally alongside those of Jean Lesage, René Lévesque, Félix Leclerc, Georges-Émile Lapalme, Paul Sauvé, and Daniel Johnson Sr. who, in their own way, laid the foundations of the Quiet Revolution.

Therefore, honourable senators, I would be remiss if I did not mention the legacy that Maurice Richard left us. From a purely sports perspective, he led the Canadiens to eight Stanley Cup wins, five of them in a row, a record unsurpassed to this day. This man forever transformed the relationship of Canadians and Quebecers with hockey, which has since become our national sport.

• (1440)

Thanks to him, public interest in hockey skyrocketed in Canada. In transmitting his passion for hockey to others, he opened the door to francophones in the NHL, which led to the careers of other French Canadian greats who followed in his footsteps.

Still today, he is a source of inspiration to many NHL players, as well as to tens of thousands of young Canadians who head off to ice rinks every week, often with fathers or mothers in tow, to follow their idol and one day, they hope, to end up in the National Hockey League. This is probably why the news of his death affected the entire hockey community in Canada, in the United States, even in Europe. Despite his passing, the legend of "the Rocket" is not fading, far from it. It is stronger than ever.

Maurice Richard was invested as an Officer of the Order of Canada, then as a Companion of the Order of Canada, and he was also made a member of Her Majesty's Privy Council.

I wish to offer my sincere condolences to his family. I count myself among the thousands of Maurice's fans who have so many unforgettable memories from throughout his career. Thank you, Maurice.

[English]

**Hon. Jeremiah S. Grafstein:** Honourable senators, hockey first introduced me to the French fact in Canada. Let me explain.

Born in southwestern Ontario in the midst of the Depression, sports was the only way to bring kids in our ethnically rich neighbourhood together. The dialects I first heard in my neighbourhood were Polish, Yiddish, Hungarian, Italian, Ukrainian, Russian, Czech, Dutch and others, but not French. Hockey made the difference. It was hockey that made me curious about one shelf of old French red-morocco-leather-bound books crammed in a corner of my father's library next to a thick Polish-French dictionary with names like Zola, Maupassant and Hugo. My father explained that the Montreal Canadiens were named after the first Canadians, who were French.

One of the biggest stories I remember from my early years was seeing a picture of Turk Broda in uniform when the great Toronto "Leaf" goalie joined the army and was replaced by Frank McCool, whose pictures I laboriously pasted in my most precious possession, my hockey scrapbook. The greatest news of all was about the "Punch Line," which pummelled our beloved Maple Leafs, and the biggest hero of all was the Rocket — Rocket Richard. On Saturday night, everyone in my hometown huddled around the radio to listen breathlessly to *Hockey Night in Canada*.

In 1944, an uncle living in Toronto invited me to visit and took me to my first game at the Maple Leaf Gardens as a birthday present. What a gift! It was a game between the Leafs and the Habs. I saw the Rocket for the very first time. Shorter, wider, even faster up close in person, the Rocket was simply poetry in motion. And he was tough. Nobody could push him around. I could not take my eyes off him. I remember his flashing eyes so wide open as he crouched low and raced over the blue line to score.

All that we as kids could do was pretend that we were him on our home rinks. He was the magic of hockey. Later, when I met him, he was still all about hockey. He was a simple man interested only in hockey.

This week, Maurice "the Rocket" Richard died after yet another valiant battle. His family insisted that no flag adorn his coffin. He did not need a flag. He was his own star. He was our hockey star. In my time, he was the greatest. He was Canadian. He was Canadian.

[Translation]

**Hon. Fernand Roberge:** Honourable senators, a few words — as "the Rocket" would have so aptly put it — to offer my condolences to the family of Maurice Richard. "The Rocket" had a passion for hockey and a desire to win. He hated losing so much that it was a sickness for him. He inspired a generation of

[Senator Nolin]

Quebecers to surpass and believe in themselves. He was a sort of pope in a way for us.

I had the honour of meeting Maurice several times. The last time, two months ago, was at a luncheon organized by the Club des Quinze, when we honoured the five greats of the Canadiens who never let us down. There was "the Rocket," "the Pocket Rocket" — Henri Richard —, Big Jean Béliveau, Dickie Moore and "Flower" — Guy Lafleur. The sixth who never let us down, but who unfortunately was unable to join us that day, was Frank Mahovlich.

I sat beside Maurice. He never changed. He spoke little and was very humble. He saw himself as just a hockey player. For us Quebecers, he became a legend: the god of the arena.

Thank you, Maurice, for showing us the way.

[English]

**Hon. Edward M. Lawson:** Honourable senators, I should like to make a brief intervention as one who admired and respected Maurice Richard. In my other life, I am a director of the Vancouver Canucks, as was Senator Perrault. The Montreal Canadiens have beat us so many times, that, I must admit, I am not a fan.

People speak of the commitment and passion that Rocket Richard had for his game. The best illustration of that occurred after he was retired and Senator Mahovlich was still playing for the Toronto Maple Leafs. The directors of *Hockey Night in Canada* asked him to pick the three stars of a Montreal-Toronto game. They knew that it would be difficult because of his passion for Montreal, but they thought he would be impartial and objective. The Rocket agreed that he could do that.

He said, "The first star is my brother Henri. What a hockey player! The second star is Jean Béliveau. What a great play maker! The third star is Yvan Cournoyer. He skates like the wind! I would like to give an honourable mention to Frank Mahovlich who got three goals and two assists. They were lucky to beat us five nothing."

Maurice Richard was a wonderful human being. I offer my condolences to his family on the loss of a great Canadian.

[Translation]

**Hon. Marcel Prud'homme:** Honourable senators, Senator Nolin told me just now that Maurice Richard was the only hockey player to have been named first, second and third star in one game. That was the Maurice Richard we loved.

I must add, however, that although almost everything has been said, one of the great moments in his life has been passed over. It is something that involves me and is the reason I feel a little bit closer to him and his family. When I saw him not long ago on the train from Ottawa to Montreal, I told him that, while I was not a great sportsman — it would not be truthful to say otherwise — had one thing in common with him. On July 1, 1992, he was appointed a member of the Privy Council by Her Majesty, Queen Elizabeth II, Queen of Canada, on the recommendation of my friend, the Right Honourable Prime Minister Brian Mulroney. I have never hesitated to say my friend Brian Mulroney, any more than I hesitate to say my friend Jean Chrétien. I told him about our having this in common. His reply to me, someone who



knows little about sports, was simply: "Yes, I thought that was really nice." This is just what Senator Roberge was trying to tell us. Maurice Richard was a man of few words. For him, however, those few words meant: It was really great, I am very happy, it was a great honour. That is why all the flags in Canada today are at half-mast.

[English]

• (1450)

Sometimes, people have a strange notion of history and background. It has not been mentioned that he was a member of the Queen's Privy Council. Had that been known, I am sure the Canadian flag would have been at half mast on the Hill today, but I want you to know that it is at half mast across Canada because of that great honour that was bestowed on him on July 1, 1992.

[Translation]

He was, and this term has been back in use in the past three days on Radio-Canada, a great French Canadian, the great term I often use to designate the people that helped to build this country, and a word which seems to so upset people in so many places in our country, in our province, in Ottawa, and in Parliament.

One need only to have listened to what has been said on television these past three days, to what the common man has had to say. You great intellectuals, great constitutional experts, if only you had listened to French-language television in the past three days, you would have heard terms like great Canadian, great Quebecer, but the ordinary people said: "He was one of us, a great French Canadian." This is not taking anything away from the tributes. I wish to take advantage of this opportunity to again salute a man who considered himself a true French Canadian, a man who brought honour to Canada and to all those who loved him.

[English]

**Hon. Sheila Finestone:** Honourable senators, as I was listening to all the worthwhile and well-merited remarks about that great hockey player, Maurice Richard, it brought to mind how many wonderful nights we had as a family, with our children, sharing *Hockey Night in Canada*. It was de rigueur that six or seven people would battle for the four seats we had. At first, I was able to go, and then I was out of the scene. Certainly my children all went, and those who could not go watched the famous Canadiens on *Hockey Night in Canada*. It provided such wonderful continuity. My family has dispersed across this land and to other parts of the world but they still like to watch *Hockey Night in Canada*. Thank you, CBC; they do watch.

They are still Canadiens fans. Le Canadien, c'est pour eux. I thank Maurice Richard, and all the wonderful players who surrounded and supported him, for his strength, his particular goal orientation and his desire to win. Having a desire to win is not wrong. Having a desire to win and working for it is what he showed us. I hope all Canadians who will miss this wonderful man, and the role that he played and the role model that he was, will keep that in mind tomorrow as we watch the funeral procession for an outstanding Canadian, un Canadien français de grande marque.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to introduce two distinguished groups in our gallery. In the centre or the Governor General's gallery is a parliamentary delegation from Croatia. The delegates are members of the Croatia-Canada Women Parliamentarians Network.

On behalf of all honourable senators, I wish you welcome here to the Senate of Canada.

**Hon Senators:** Hear, hear!

**The Hon. the Speaker:** Honourable senators, in the left-hand or Speaker's gallery, we have six guests from Ghana. They are here in Canada for a three-week forest conservation program undertaken jointly with Lakehead University. They are the guests of Honourable Senator Wilson, who is the Chancellor of Lakehead University.

On behalf of all honourable senators, I wish you welcome here to the Senate of Canada.

**Hon Senators:** Hear, hear!

## SENATORS' STATEMENTS

### THE HONOURABLE BILL ROMPKEY

CONGRATULATIONS ON RECEIPT OF HONORARY DOCTORATE  
DEGREE FROM MEMORIAL UNIVERSITY

**Hon. Joan Cook:** Honourable senators, last week was spring convocation at Memorial University of Newfoundland and Labrador. The university celebrated its fiftieth anniversary, and my friend and colleague Senator Bill Rompkey received an honorary doctorate of laws.

**Some Hon. Senators:** Hear, hear!

**Senator Cook:** Bill entered Memorial University in 1953 when enrolment was in the 300 to 400 range, graduating in 1957. Today, the enrolment is some 20,000.

As an educator, he and his wife, Carolyn, spent their years primarily on the coast of Labrador. Their children, Hilary and Peter, were born there. In the early 1970s, Bill entered politics, winning seven consecutive federal elections, serving the people of Newfoundland and Labrador in the House of Commons.

Honourable senators, from president of the students representative council, to educator, to the House of Commons, to the Senate, he has served and continues to serve what he terms "my people" with distinction, and dreams of the time when the land claims for the Innu and Inuit people are settled.

It is indeed an honour for me to stand in this place today to offer my sincere congratulations to you, Senator — now Doctor — Bill Rompkey.

## THE HONOURABLE DAN HAYS

### CONGRATULATIONS ON RECEIPT OF THE GRAND CORDON OF THE ORDER OF THE SACRED TREASURE OF JAPAN

**Hon. Catherine S. Callbeck:** Honourable senators, I should like to congratulate Senator Hays for being the recipient of the Grand Cordon of the Order of the Sacred Treasure, one of the highest decorations of Japan.

As many of you are aware, Senator Hays has been involved in Canada-Japan relations for many years. As a member of the Senate, he has been a participant in our Canada-Japan Friendship Group since he became a senator in 1984. However, his relations with Japan date further back than even this date.

He first became acquainted with Japan and its customs in his early childhood, when he developed a close friendship with the sons of a Japanese-Canadian family whose father worked on his father's farm. In 1970, as a rancher, he visited Japan in his efforts to expand the trade of agricultural products between the two countries. He has been a prominent member of the Asia-Pacific Parliamentary Forum ever since its inception in 1993, serving as the chairman of its Canadian section. In 1997, Senator Hays undertook a mission to Japan, as Special Envoy on Landmines. Furthermore, last September, Senator Hays was a key participant in Team Canada's visit to Japan.

I have had the pleasure to travel to Japan with Senator Hays as a member of the Canada-Japan Friendship Group, so I know firsthand how hard he works to further the ties between the two countries, and how highly respected and regarded he is in that country.

Last night, these accomplishments were formally recognized in a ceremony at the Japanese ambassador's residence where Senator Hays was awarded one of the highest decorations of Japan, the Grand Cordon of the Order of the Sacred Treasure. This honour was given to Senator Hays as a token of appreciation from the Japanese government for the pivotal role our colleague has played in shaping Canada's relations with Japan, and for his invaluable contribution to friendship between the two nations.

This is a great honour, and I should like to offer Senator Hays my sincerest congratulations.

• (1500)

## ONTARIO

### WALKERTON—TRAGIC DEATHS RESULTING FROM POLLUTED WATER

**Hon. Lorna Milne:** Honourable senators, I pay tribute today to the adults and children of Walkerton, Ontario, who have lost their lives in an outbreak of *E. coli* contamination over the last week.

As of this morning, five people have died from drinking contaminated water. Over 1,000 people were taken ill; 11 children remain in hospital, 6 of them on dialysis; 3 adults remain in hospital. Most tragically of all, according to the local medical officer of health, it could have been prevented.

On Thursday, May 25, Dr. Murray McQuigge stunned the country with his revelation that the Walkerton Public Utilities Commission knew there was a problem with the water before they told the public.

Honourable senators, Walkerton is a quiet, decent little community of 4,800 people along the Saugeen River in southwestern Ontario. It lies just a few miles upstream from the area where my husband's ancestors settled almost 150 years ago and where his brother and my niece and nephew still farm. It is surrounded by fertile, smiling fields, the heartland and some of the best farmland and farmers in Ontario, and therein may lie the problem.

Recently in this place, I spoke of Canada's fortune in having the world's largest supply of fresh water. Governments across this country — federal, provincial and municipal — have a duty to ensure that Canadians continue to have safe access to this most basic and fundamental resource. The people of Walkerton, like all Canadians, have the right to clean and safe water, but even while I was speaking in this place, the people of Walkerton were drinking foul, contaminated water.

This tragedy is one which we would all like to think could never happen in Canada. Infection through a public water supply is something which we often associate with other parts of the world. Honourable senators, last week, we witnessed in our own country the magnitude and the rapidity of the tragedy that contaminated water can produce. I hope I speak on behalf of all senators in echoing Prime Minister Chrétien's words, "We must ensure that situations like this do not occur again in our country."

Let this tragedy be a lesson to all levels of government. If it means abdicating their assigned responsibilities to maintain health and safety, budget cuts and tax rebates can go too far. Balanced budgets can leave too high a price to pay.

The Government of Ontario gutted its own Ministry of the Environment and then cut the ministry's budget to the bone. The ministry now admits that it knew about a potential problem in Walkerton at least two years ago.

Spare a thought or a prayer, my friends, for the good people of Walkerton and what has happened to their town and their water supply, that precious resource of which I spoke in this place a few weeks ago when it was already endangered.

Honourable senators, spare a thought for the people who are presently on dialysis, particularly for those six children, innocent children whose futures I hope are safe and secure and healthy, but that I cannot predict. In fact, I cannot bear to think about what they and their parents are going through right now.

## HUMAN RESOURCES DEVELOPMENT

### DISMANTLING OF LONGITUDINAL LABOUR FORCE FILE

**Hon. Roch Bolduc:** Honourable senators, the Minister of Human Resources Development Canada, the Honourable Jane Stewart, announced today that, following discussions with the Privacy Commissioner, HRDC's information databank or labour market program called the Longitudinal Labour Force File is being dismantled.



With the dismantling of LLFF, HRDC has eliminated the computer program used to link its information with information from the Canada Customs and Revenue Agency and data on social assistance from provincial and territorial governments. Honourable senators will be happy to learn that the information has been returned to that agency.

### UNITED NATIONS REPRESENTATIVE CHRISTOPHER WESTDAL

2000 REVIEW CONFERENCE OF THE NUCLEAR  
NON-PROLIFERATION TREATY—CONGRATULATIONS  
ON NEGOTIATING AGREEMENT BETWEEN  
IRAQ AND UNITED STATES

**Hon. Douglas Roche:** Honourable senators, from time to time, we hear nostalgic references to the golden age of Canadian diplomacy in the 1950s and 1960s. The golden age is presumed to belong in the past. However, we have a modern example of golden diplomacy exercised by an outstanding Canadian ambassador, Christopher Westdal, a 52-year-old professional diplomat who has served as Canadian High Commissioner in Bangladesh and Ambassador in South Africa and Ukraine.

In his current capacity as Permanent Representative to the United Nations for Disarmament, Ambassador Westdal led the Canadian delegation to the month-long 2000 Review Conference of the Non-Proliferation Treaty at the UN in New York, which concluded May 20.

To his surprise, Ambassador Westdal found himself drafted by the president of the conference, Ambassador Abdallah Baali of Algeria, to chair a special committee to break the Middle East deadlock over contentious issues involving both Israel and Iraq. Middle East issues have proved intractable at previous NPT conferences.

The reason Ambassador Westdal was chosen was because of Canada's even-handed approach to Middle East issues and the work of Ambassador Westdal's predecessor, Ambassador Mark Moher, in presenting reasonable compromises at preparatory meetings over the past three years.

This time, the stand-off between the United States and Iraq was like a brick of cement: It could not be moved. With every other issue at the NPT conference resolved, the conference ground to a halt while overtime negotiations continued for 30 hours. Since neither protagonist would move, the NPT conference, which operates by consensus, was in danger of collapse. At two o'clock in the morning, it seemed all was lost, but Westdal, ably assisted by David Viveash, insisted on maintaining his shuttle negotiations between the Americans in one room and the Iraqis in another.

Chris Westdal refused to give up, and his persistence paid off when he secured a break-through — and an agreement — several hours later.

The issues of the conference were complex and they are explained in my complete report available on the Project Ploughshares Web site at [www.ploughshares.ca/](http://www.ploughshares.ca/).

In brief, the Non-Proliferation Treaty Review Conference was able to achieve a landmark in the long struggle to rid the world of nuclear weapons. Ambassador Westdal, a Canadian diplomat who knows how to negotiate, made a signal contribution to the well-being of the world community. He showed the golden side of Canadian diplomacy and he deserves our congratulations.

### SOUTH KOREA

TWENTIETH ANNIVERSARY OF PRO-DEMOCRACY MOVEMENT

**Hon. Lois M. Wilson:** Honourable senators, last Sunday, Canada proudly remembered the contribution of the Unknown Soldier to the ongoing struggle for democracy in the world.

In mid May, I had the privilege of being one of two Canadians invited back to South Korea to participate in the twentieth anniversary commemoration of the pro-democracy movement in that country.

On May 18, 1980, in the city of Kwang-ju, there took place a massacre of university students who were in the vanguard of the pro-democracy movement. It is a date etched in South Korea's history. The country was under martial law, curfew and national security laws under dictator Chun Doo Hwan's regime at the time, but word had leaked out of the courageous opposition by students and by ordinary citizens to the repressive government policies and gross violations of human rights.

In January, 1981, therefore, I went to South Korea as part of a four-person international team from the World Council of Churches on a pastoral visit to the bereaved relatives of the massacred students. I went illegally to the Kwang-ju cemetery where I counted far more graves than the government acknowledged and, as a result, was able to make that news known internationally.

At the same time, the now President of South Korea, Kim Dae-Jung, was in prison and his spouse under house arrest, but the strong resistance to dictatorship by citizens turned out to be definitive in South Korean history. The pro-democracy movement was so strong that politicians had to respond. The tide was turned and resistance opened up a new road for South Korea.

This past Sunday, the Governor General of Canada, Her Excellency the Right Honourable Adrienne Clarkson, referred to the courageous actions of Canadian soldiers in successive wars as events that cemented a nation. The Kwang-ju massacre was just such an event for South Korea.

• (1510)

Canada had a special role. On November 21, 1980, the now President Kim Dae-Jung was in prison and under the death sentence for giving sterling leadership to the movement for democracy. In the Canadian "other place," Bill Clarke, sitting member for Vancouver, moved that:

We express serious concern over the action of the military court in South Korea sentencing to death Kim Dae-Jung, and that we implore President Chun to use his ultimate executive power to secure the release of Mr. Kim.

The motion passed unanimously. The Canadian government did intervene, to be followed by other countries.

At the memorial service at the cemetery on May 18 of this year, and at the special reception for international allies, the President spoke eloquently of the long struggle that turned him from a prisoner into a president. He also spoke of his recent Berlin declaration on "Reconciliation and Co-operation for Peace and Reunification of the Korean Peninsula," calling for talks between North and South Korea, such talks to take place on June 12 to 14 of this year.

Honourable senators, this may well herald the beginning of a long struggle for peace and stability on the Korean peninsula, and end the last vestiges of the Cold War situation, so strongly hoped for by the international community. We will watch Canada's unfolding foreign policy concerning North Korea with more than passing interest.

### PAGES EXCHANGE PROGRAM WITH HOUSE OF COMMONS

**The Hon. the Speaker:** Honourable senators, before I proceed with the next item on the Order Paper, I should like to introduce to you the pages from the House of Commons who are with us this week.

We have Paul El-Meouchy, who is studying International Management at the Faculty of Administration of the University of Ottawa. Paul is from Montreal, Quebec.

[Translation]

Anna Weier is a student in the Faculty of Social Sciences at the University of Ottawa. Anna is majoring in psychology. If I may be permitted to show a bit of hometown pride, she is from Winnipeg, Manitoba.

[English]

On behalf of all honourable senators, I wish you welcome here. I hope that you will find your week with us pleasant, interesting and instructive.

## ROUTINE PROCEEDINGS

### INFORMATION COMMISSIONER

#### SPECIAL REPORT TABLED

**The Hon. the Speaker:** Honourable senators, I have the honour to table the Special Report to Parliament of the Information Commissioner of Canada, pursuant to subsection 39(1) of the Access to Information Act, being report [ Senator Wilson ]

cards on compliance with response deadlines by the following departments: Human Resources Development Canada, Transport Canada, Citizenship and Immigration Canada, Canada Customs and Revenue Agency, Foreign Affairs and International Trade, National Defence, Health Canada and the Privy Council Office.

[Translation]

## LIBRARY OF PARLIAMENT

### SECOND REPORT OF THE JOINT COMMITTEE PRESENTED

**Hon. Louis J Robichaud,** Joint Chair of the Standing Joint Committee on the Library of Parliament, presented the following report:

Tuesday, May 30, 2000

The Standing Joint Committee on the Library of Parliament has the honour to present its

### SECOND REPORT

Your Committee recommends that it be authorized to assist the Speaker of the Senate and the Speaker of the House of Commons in directing and controlling the Library of Parliament; and that it be authorized to make recommendations to the Speaker of the Senate and the Speaker of the House of Commons regarding the governance of the Library and the proper expenditure of moneys voted by Parliament for the purchase of books, maps or other articles to be deposited therein.

Your Committee recommends that its quorum be fixed at seven (7) members, provided that both Houses are represented including a Member from the Opposition as well as a Senator from the Opposition whenever a vote, resolution or other decision is taken, and that Joint Chairs be authorized to hold meetings to receive evidence and authorize the printing thereof as long as (4) Members are present including a Member from the Opposition as well as a Senator from the Opposition.

Your Committee further recommends to the Senate that it be empowered to sit during sittings of the Senate.

A copy of the relevant Minutes of Proceedings (Meeting No. 2) is tabled.

Respectfully submitted,

LOUIS J. ROBICHAUD  
*Joint Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?



On motion of Senator Robichaud, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

[English]

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### NINTH REPORT OF COMMITTEE PRESENTED

**Hon. Bill Rompkey**, Chair of the Standing Committee on Internal Economy, Budgets and Administration, presented the following report:

Tuesday, May 30, 2000

The Committee on Internal Economy, Budgets and Administration has the honour to present its

### NINTH REPORT

Your Committee wishes to inform the Senate that it has adopted a policy on Employment Equity and Diversity and has directed that a self-identification exercise be undertaken by Human Resources.

The objective of this policy is to achieve equality in the workplace for women, aboriginal peoples, persons with disabilities and members of visible minorities, so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability.

In adopting this policy, the Internal Economy Committee acknowledges its interest to increase the participation and representation in the Senate administration of qualified people from the four designated groups and has decided that action must be taken to facilitate their participation in greater numbers. This entails both the identification of and removal of systemic and other barriers to employment opportunities that may adversely affect women, aboriginal peoples, persons with disabilities and visible minorities. It also involves the implementation of special measures and the application of the concept of reasonable accommodation when these are necessary to achieve and maintain a representative workforce.

Respectfully submitted,

WILLIAM ROMPKEY  
*Chair*

**The Hon. the Speaker:** Honourable senators, when shall this report be taken into consideration?

On motion of Senator Rompkey, report placed on the Orders of the Day for consideration at the next sitting of the Senate.

## BUSINESS OF THE SENATE

### ADJOURNMENT

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, on Tuesday at this time I normally ask for leave to revert to this item at the end of the Notice Paper for purposes of the adjournment motion. I would request leave now to give notice of two motions that I wish to move without notice. However, I should like to read the motions so that there will be an opportunity for the Deputy Leader of the Opposition to raise a question, since we do have an unusual day tomorrow in that we have scheduled a vote by order of this place at 5:30 p.m. Wednesday is also normally a short day.

**The Hon. the Speaker:** Is leave granted, honourable senators, to proceed as the Honourable Senator Hays has indicated?

**Hon. Senators:** Agreed.

**Senator Hays:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I propose to move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 31, 2000, at 1:30 p.m.;

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to suspend the sitting until 5:00 p.m.;

That at 5:00 p.m., pursuant to the Order of May 18, 2000, the Speaker shall put all questions necessary to dispose of third reading of Bill C-2; and if a standing vote is requested it will take place at 5:30 p.m., following which the Speaker shall suspend the Senate;

That all Committees be authorized to sit tomorrow, during the suspension of the sitting of the Senate, until 4:45 p.m.; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

Honourable senators, I suggest that this motion would accommodate the sitting of committees, which is our purpose on Wednesdays, from 3:30 until 4:45, at which time the sitting committees would be required to adjourn to allow senators to come to the chamber for a voice vote at 5 p.m. and, if necessary, a standing vote at 5:30 p.m.

Honourable senators, assuming that Bill C-2 is passed by the Senate, it is also anticipated that we will have Royal Assent for Bill C-2, as well as for Bill C-10, which has been given third reading.

I would be pleased, honourable senators, to deal with any questions concerning this proposal. If there are other suggestions as to how we might handle our business for tomorrow, I would be pleased to entertain them.

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, the only suggestion is that perhaps honourable senators would find it more convenient if the vote that has been ordered to be held at 5 p.m. were held at 3:15 p.m. The bells could ring at 3 p.m. If honourable senators agree, it would open up the time for our committees to continue.

• (1520)

**Senator Hays:** Honourable senators, perhaps I could ensure that there are no other questions. If there are none, I will attempt to deal with Senator Kinsella's question and determine whether there is a will to accommodate a change.

[Translation]

**Hon. Marcel Prud'homme:** Senator Kinsella's suggestion makes a lot of sense, but that is not what I will be discussing.

[English]

If this were the wish of all senators, I would not have difficulty with the suggestion as put forward. Perhaps negotiations are unnecessary. My honourable friends can negotiate in front of us. It seems that we could get approval from every quarter. It makes sense because then senators may proceed to their committees. However, I am in your hands.

[Translation]

**Hon. Lucie Pépin:** Honourable senators, I wish to point out that a number of senators will be attending the funeral of the Honourable Maurice Richard and that the bus cannot be back before 3 p.m. or 3:15 p.m.

[English]

**Hon. Lorna Milne:** Honourable senators, is the Honourable Senator Hays aware that the Standing Senate Committee on Legal and Constitutional Affairs will be sitting, I hope, tomorrow afternoon? We have scheduled our witnesses in order to have a break at five o'clock for the vote and then to carry on again in the evening. I am in the hands of the Senate. It does not matter. We have scheduled the witnesses to fit around either scenario.

**Senator Prud'homme:** Do what you want.

**Senator Hays:** Honourable senators, unless there is a strong reason to change the order, I hesitate to do so. Some senators tend to object. If there were a good reason, we might approach this differently. However, in light of what Senator Pépin has said about the funeral of Maurice Richard and what Senator Milne has said — and she chairs the only committee affected by this proposed motion, I suggest that we leave the motion as is. Accordingly, I should like to deal with this matter now.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Senator Hays:** Honourable senators, with leave of the Senate and notwithstanding rule 58(1)(h), I move:

That when the Senate adjourns today, it do stand adjourned until tomorrow, Wednesday, May 31, 2000, at 1:30 p.m.;

That at 3:30 p.m. tomorrow, if the business of the Senate has not been completed, the Speaker shall interrupt the proceedings to suspend the sitting until 5:00 p.m.;

That at 5:00 p.m., pursuant to the Order of May 18, 2000, the Speaker shall put all questions necessary to dispose of third reading of Bill C-2; and if a standing vote is requested it will take place at 5:30 p.m., following which the Speaker shall suspend the sitting of the Senate;

That all Committees be authorized to sit tomorrow, during the suspension of the sitting of the Senate, until 4:45 p.m.; and

That all matters on the Orders of the Day and on the Notice Paper, which have not been reached, shall retain their position.

In order to be clear, honourable senators, at 5:30 p.m., following the vote, the Speaker shall suspend the sitting of the Senate, not adjourn the Senate, so that we may proceed with Royal Assent.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to.

## PRIVACY COMMISSIONER

### APPEARANCE BEFORE COMMITTEE OF THE WHOLE—MOTION TO AUTHORIZE ELECTRONIC COVERAGE ADOPTED

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, the second matter to which I referred concerns the other order that we have before this place, which is to go into Committee of the Whole at 4:30 p.m. today in order to receive as a witness before the Senate Mr. Bruce Phillips, the Privacy Commissioner, as we was done approximately one year ago.

I will read the motion that I should like to propose and deal with any questions from the Deputy Leader of the Opposition or other senators. With leave of the Senate, and notwithstanding rule 58(1)(f), I move:

That the Cable Public Affairs Channel (CPAC) be authorized to bring television cameras into the Chamber today to broadcast the proceedings of the Committee of the Whole on the work of the Office of the Privacy Commissioner, Mr. Bruce Phillips, with the least possible disruption of the proceedings.

**The Hon. the Speaker:** Is leave granted, honourable senators?

**Some Hon. Senators:** Agreed.

**Hon. Fernand Robichaud:** No.



**Senator Hays:** I think I hear a dissenting voice.

[English]

**The Hon. the Speaker:** I did not hear a dissenting voice.

Is leave granted, honourable senators?

**Some Hon. Senators:** Agreed.

**The Hon. the Speaker:** I did not hear any "nays."

**Senator Robichaud:** I said "no" twice. It should have been heard by now.

**Hon. J. Michael Forrestall:** Stand up and be counted.

**The Hon. the Speaker:** I did not hear any "nays."

**Senator Forrestall:** I did.

**The Hon. the Speaker:** Would those honourable senators in favour of the motion please say "yea?"

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Would those honourable senators opposed to the motion please say "nay?"

**Senator Robichaud:** Nay.

**The Hon. the Speaker:** In my opinion, the "yeas" have it.

Motion agreed to, on division.

## CANADIAN NATO PARLIAMENTARY ASSOCIATION

REPORT OF CANADIAN DELEGATION TO MEETING OF THE  
STANDING COMMITTEE AND THE SECRETARIES OF NATIONAL  
DELEGATIONS TABLED

**Hon. Bill Rompkey:** Honourable senators, I have the honour to table the sixth report of the Canadian NATO Parliamentary Association, which represented Canada at the meeting of the Standing Committee and the Secretaries of National Delegations, held in Brussels, Belgium, on April 8, 2000.

[Translation]

## L'ASSEMBLÉE PARLEMENTAIRE DE LA FRANCOPHONIE

REPORT OF CANADIAN DELEGATION  
TO MEETING IN BAMAKO, MALI. TABLED

**Hon. Rose-Marie Losier-Cool:** Honourable senators, pursuant to rule 23(6), I have the honour to present, in both official languages, the report of the Canadian Branch of the Assemblée parlementaire de la Francophonie, and the related financial report. The report deals with the meeting of the Committee on Co-operation and Development held in Bamako, Mali, from February 21 to February 23, 2000.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

NOTICE OF MOTION TO AUTHORIZE COMMITTEE TO MEET  
DURING SITTINGS OF THE SENATE

**Hon. Mira Spivak:** Honourable senators, I wish to reintroduce a motion that was withdrawn in my absence on Thursday last.

**Hon. Dan Hays (Deputy Leader of the Government):** Perhaps Senator Spivak could simply give notice of her motion, in order that we might debate it at the next sitting of the Senate.

**Senator Spivak:** Honourable senators, I give notice that at the next sitting of the Senate I will move:

That the Standing Senate Committee on Energy, the Environment, and Natural Resources have power to sit at 5:30 p.m. on Tuesday, June 6 and June 13, 2000, for the purpose of hearing witnesses on its study of Bill S-20, to amend and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

• (1530)

## QUESTION PERIOD

### NATIONAL DEFENCE

REPORT ON RESTRUCTURING RESERVES—VIABILITY OF  
MILITIA—RESPONSE OF GOVERNMENT

**Hon. J. Michael Forrestall:** Honourable senators, I have a question for the Leader of the Government in the Senate. It goes back to questions I asked on March 28, 2000, about the militia restructure and the viability of the reserve units.

As the minister is probably aware, I received a response to my question in this chamber. That response stated:

Reserve restructuring is a complex matter with many factors to consider and no decision concerning restructuring — including whether units would be assigned new roles — has been made.

I repeat that this was in response to a question that I posed on March 28, 2000.

On March 30, 2000, the Monitoring Committee chair, the Honourable John Fraser, sent a letter to the Minister of National Defence based on this group's collection of evidence, which states:

The Army Commander issued a directive concerning the creation of new capabilities within the Army Reserves on March 2nd....Yet, the new funding model cuts Reserve pay by approximately \$30 million. The Vice-Chief of the Defence Staff has reported to me that he has "made available an additional \$30 million for the Army Reserve Programme beginning the FY 2001/02. These funds will be used to provide equipment and training to units undertaking new roles and tasks.

As I said, in reply to my question in this chamber on March 28, 2000, I was told that no decision was made. Yet, in a letter on March 30, 2000, based on gathered evidence from one Privy Council member to another, I find that the army commander issued a directive on March 2, 2000, stating that \$30 million had been assigned for new roles and tasks.

I would not want to indicate that the minister misled this chamber intentionally or in any other way. Will the minister inform us as to the big secret or what is the difficulty? With respect to the militia, would the minister tell us whether the facts are seen properly in the eyes of the Honourable John Fraser or in the eyes of someone else? Obviously, someone is either not talking to someone else, or the worse possible scenario is a deception.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I will attempt to get an update with respect to the status of any reserve reorganizations. I think that the earlier request had to do with specific reserve units and their future.

Honourable senators, I will go back to the Minister of National Defence. In view of the new information the honourable senator brings here today, I will ask for an update so that I can provide it to him.

**Senator Forrestall:** I am having some difficulty understanding. Either I have not learned to read yet or the minister does not understand what I am talking about. I have here a written answer upon which I should be able to rely as being accurate. I never questioned it at the time. I thought that it was accurate and true. The answer states:

Reserve restructuring is a complex matter with many factors to consider and no decision concerning restructuring — including whether units will be assigned new roles — has been made.

The correspondence from John Fraser, chair of the minister's advisory committee, tells us that decisions had been taken a month earlier. How does one spend \$30 million without a decision, without some change taking place, or without something having been accomplished?

The reserves of this country have been held in disregard and contempt for their capacity to plan and organize the training schedules that are before them for too long now. Perhaps they deserve something a bit better. My hope is that the minister can obtain from the Chief of the Defence Staff, the Minister of National Defence, or someone, a straight answer.

[ Senator Forrestall ]

**Senator Boudreau:** As I indicated previously, I would have assumed that the response given at that time indicated that no specific decisions had been made with respect to certain units and with respect to reorganization of the reserves in general. Rather than speculate on that, I will simply go back to the minister and ask for further clarification of the information.

I feel obliged to say that I have had an opportunity, in the brief time that I have been in this present role, to visit a number of reserve units, and I was impressed with them. One of those visits was in Sydney, where we were opening a very impressive new facility.

**Senator Forrestall:** Honourable senators, to make the point, if we cannot rely on the accuracy of a written response, what are we to do with a contradictory reply? How are we to handle these?

YUGOSLAVIA—ROTATION OF PEACEKEEPING SOLDIERS  
HOME—PROBLEMS OF RETURN FLIGHT—RESPONSE OF  
GOVERNMENT

**Hon. J. Michael Forrestall:** Honourable senators, I have had, as well, a written response to a question raised in the Senate on April 7, 2000, about the abandonment of Canadian peacekeepers returning home from Kosovo. That response does not mention that the senior officers checked into hotels, while their soldiers and junior officers were left stranded at the airport. Those troops, as one can understand, felt somewhat abandoned.

Honourable senators, the people to whom my staff have spoken do not know anything about the arrangements, absolutely nothing about the national command element that were tucked into their hotel rooms. Can the minister tell us why these discrepancies keep arising? Why do they exist? Do problems arise at the drafting of his advice to the chamber? Indeed, it is becoming a little difficult, not just for senators, but for anyone who follows closely. Many people follow closely the events pertaining to national defence in this country.

That is yet another example, all within a month, of receiving inaccurate correspondence. The minister knows that I can go back and dredge up a dozen examples, if he were to want to hear about them.

What is the response to my comments?

**Hon. J. Bernard Boudreau (Leader of the Government):** I am not sure that I understand the point honourable senator is making. The response did not indicate that there were certain officers staying at a hotel and other officers staying in the airport. Senator Forrestall's complaint, I suspect, is that the answer was not complete enough and that it left out some information.

Honourable senators, I will review the original question and answer. If upon review it appears that there is any information that should have been forthcoming to the questions, I will certainly raise that with the Minister of National Defence.

**Senator Forrestall:** Perhaps then I could make it simple for them. Would the minister please explain why group 4 got home before group 3?



**Senator Boudreau:** Did the honourable senator say that Group 3 got home before Group 4? Would they be going numerically, by any chance? That is another question I can ask.

**Senator Forrestall:** That is the point. Would an answer in written form be provided? The honourable leader gave a different answer when responding to my questions.

[Translation]

● (1540)

## ORDERS OF THE DAY

### CANADA ELECTIONS BILL

#### THIRD READING—MOTIONS IN AMENDMENT— DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 375, on page 154,

(a) by replacing line 27 with the following:

“375. (1) A registered party shall, subject to”;

(b) by replacing line 32 with the following:

“registered party shall appoint a person, to be”;

(c) by adding the following after line 36:

“(3) The registration of an electoral district agent is valid

(a) until the appointment of the electoral district agent is revoked by the political party;

(b) until the political party that appointed the electoral district agent is deregistered; or

(c) until the electoral district of the electoral district agent no longer exists as result of a representation order made under section 25 of the *Electoral Boundaries Readjustment Act*;

(4) Outside an election period, the electoral district agent of a registered party is:

(a) responsible for all financial operations of the electoral district association of the party; and

(b) required to submit to the chief agent of the registered party that appointed the person to act as the electoral district agent an annual financial transactions return, in accordance with subsection (5), on the electoral district association's financial transactions.

(5) The annual financial transactions return referred to in subsection (4) must set out

(a) a statement of contributions received by the following classes of contributor: individuals, businesses, commercial organizations, governments, trade unions, corporations without share capital other than trade unions, and unincorporated organizations or associations other than trade unions;

(b) the number of contributors in each class listed in paragraph (a);

(c) subject to paragraph (c.1), the name and address of each contributor in a class listed in paragraph (a) who made contributions of a total amount of more than \$200 to the registered party for its use, either directly or through one of its electoral district associations or a trust fund established for the election of a candidate endorsed by the registered party, and that total amount;

(c.1) in the case of a numbered company that is a contributor referred to in paragraph (c), the name of the chief executive officer or president of that company;

(d) in the absence of information identifying a contributor referred to in paragraph (c) who contributed through an electoral district association, the name and address of every contributor by class referred to in paragraph (a) who made contributions of a total amount of more than \$200 to that electoral district association in the fiscal period to which the return relates, as well as, where the contributor is a numbered company, the name of the chief executive officer or president of that company, as if the contributions had been contributions for the use of the registered party;

(e) a statement of contributions received by the registered party from any of its trust funds;

(f) a statement of the electoral district association's assets and liabilities and any surplus or deficit in accordance with generally accepted accounting principles, including a statement of

(i) disputed claims under section 421, and

(ii) unpaid claims that are, or may be, the subject of an application referred to in subsection 419(1) or section 420;

g) a statement of the electoral district association's revenues and expenses in accordance with generally accepted accounting principles;

(h) a statement of loans or security received by the electoral district association, including any conditions on them; and

(i) a statement of contributions received by the electoral district association but returned in whole or in part to the contributors or otherwise dealt with in accordance with this Act.

(6) For the purpose of subsection (5), other than paragraph (5)(i), a contribution includes a loan.

(7) The electoral district association shall provide the chief agent of a registered party with the documents referred to in subsection (5) within six months after the end of the fiscal period.”; and

(d) by renumbering subsection (3) as subsection (8) and any cross-references thereto accordingly,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 405, on page 166, by replacing lines 36 and 38 with the following:

“chief agent, or a registered agent or an electoral district agent of a registered party, shall accept contributions to a registered party.

(4) No person, other than a chief agent of a registered party, shall provide official receipts to contributors of monetary contributions to a registered party for the purpose of subsection 127(3) of the *Income Tax Act*.”,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 424, on page 174, by replacing lines 14 to 16 with the following:

“(a) the financial transactions returns, substantially in the prescribed form, on the financial transactions of both the registered party and of the registered party's electoral district associations”;

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 426,

(a) on page 176, by replacing lines 36 to 38 with the following:

“shall report to its chief agent on both its financial transactions return and trust fund return referred to in

section 428, and on the annual financial transactions returns on the electoral district associations' financial transactions referred to in paragraph 375(4)(b), and shall make any”; and

(b) on page 177,

(i) by replacing line 11 with the following:

“electoral district agents, registered agents and officers of the regis-”, and

(ii) by replacing line 20 with the following:

“electoral district agents, registered agents and officers of the party to”,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 473, on page 202, by replacing lines 37 and 38 with the following:

“registered party or to a registered agent of that registered party in the”,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 477, on page 203, by replacing lines 30 to 31 with the following:

“477. A candidate, his or her official agent, and the chief agent of a registered party, as the case may be, shall use the prescribed forms for”,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 560, on page 246,

(a) by replacing line 18 with the following:

“ceipt with the Minister, signed by the chief agent or a registered”; and

(b) by replacing line 25 with the following:

“(a) by the chief agent or a registered agent of a registered”.

**Hon. Gérald-A. Beaudoin:** Honourable senators, in my opinion, clause 18.1 of Bill C-2 needs to be amended so as to fully recognize the role of the Senate as a legislative chamber.

The Senate plays an essential role with respect to legislation. Its consent is required for bills to be passed.

Here we are dealing with a bill which amends the Canada Elections Act, and which specifically includes as clause 18.1 the possibility that the Chief Electoral Officer may carry out studies on an electronic voting process with the prior approval of the House of Commons.



This clause leaves out the Senate. The Honourable Don Boudria, Leader of the Government in the House of Commons, wrote on May 3 to the Chair of the Standing Committee on Legal and Constitutional Affairs, the Honourable Senator Lorna Milne, conceding that the Senate had been omitted, and proposing to add it in a future amendment.

We now have an opportunity to correct that omission. Otherwise, the Senate is relegated to the role of a mere onlooker who, in the case of Bill C-2, is not even consulted. This constitutes an erosion of the Senate's powers.

I agree with what Senator Joyal told the Standing Committee on Legal and Constitutional Affairs on March 30 of this year:

...I could not agree with excluding the Senate from a provision of such great importance. As I said, we have amended bills from which the Senate had been excluded.

Every time a bill from the House of Commons excludes the Senate, I or someone else would move amendments.

This provision is a private member's bill. The fact remains, however, that it excludes one of the essential chambers of the Parliament of Canada on a fundamental decision, namely, one that changes the way we vote. This may have tremendous repercussions in the rural regions or in areas of the country that are not so familiar with electronic voting. Accordingly, this pertains to the exercise of a basic democratic right. I cannot accept the exclusion of the Senate from a provision like that.

I support my colleague and that is why, honourable senators, I am of the opinion that we should amend Bill C-2.

#### MOTION IN AMENDMENT

**Hon. Gérard-A. Beaudoin:** Honourable senators, I move, seconded by the Honourable Senator Keon, that Bill C-2 be not now read a third time but that it be amended:

in clause 18.1, on page 13, by replacing lines 12 and 13 with the following:

"committee of the Senate and the committee of the House of Commons that normally considers electoral matters, or by the joint committee of both Houses of Parliament designated or established for that purpose".

**The Hon. the Speaker:** Honourable senators, leave of the Senate is required when more than three amendments are moved. We now have seven amendments. Is leave granted, honourable senators?

**Hon. Senators:** Agreed.

**Hon. Pierre Claude Nolin:** Would Senator Beaudoin accept a few questions?

**Senator Beaudoin:** Certainly.

**Senator Nolin:** During consideration by the committee — obviously, this is an addition that was made in the House of Commons — this clause was not part of the original bill, was it?

**Senator Beaudoin:** Yes, I do believe it was proposed later.

**Senator Nolin:** What are the government's comments on this addition? Has the minister made any comments about the matter of adding the Senate, or the fact that only a House of Commons committee would have to consent to such an experiment by the Chief Electoral Officer?

**Senator Beaudoin:** Senator Joyal will surely have the answer to that question. I was present at the Standing Committee on Legal and Constitutional Affairs, and it was stressed that in such a case, a report would be made to the House of Commons.

My colleague did indeed point out that the Senate was omitted, as did I, and the minister came and spoke before us. As I explained in my speech, he sent a letter to the Chair of our committee clearly stating that the Senate had been omitted in the bill and that he proposed to add the words "the Senate" in a future amendment.

The minister is right in his desire to amend this bill to include the Senate. I congratulate him, but I believe it must be done immediately. I do not want to go back to Bill C-20, but omission of the Senate is one of our problems.

Even if this is a bill relating to elections, the Canadian Senate, a legislative chamber, is also interested in elections. All of us vote, and if there is a desire to change the way votes are cast, and if the House of Commons is consulted, then so must the Senate be consulted, or a joint Senate and House committee. I am taking this opportunity to submit this amendment immediately. It is both easy and necessary.

• (1550)

**Hon. Serge Joyal:** Honourable senators, I should like to continue the debate on the amendment moved by Senator Beaudoin. I thank Senator Beaudoin for kindly raising this question since, in fact, it concerns all of us as lawmakers and, more particularly, it concerns us as members in this house with our full legislative powers shared with our colleagues in the other House.

When the minister and government House leader appeared before the Standing Senate Committee on Legal and Constitutional Affairs on Bill C-2, Senator Beaudoin and a number of other senators were present, and I raised the fact that at clause 18.1, the permission or approval given the committee of the House to agree to testing an electronic voting process omitted the Senate.

The minister pointed out that this amendment had been made by a committee of the House of Commons during debate of the bill. It therefore had not appeared — and Senator Nolin was right in this — in the government's original bill. However, the government could have amended it at third reading stage since it had been amended at committee stage.

I pointed out to the minister that we had recently amended bills or required amendments to bills that omitted the Senate. I would remind the honourable senators that since the first session of the 36th Parliament, five bills have been amended since their introduction in the other place, because they omitted the Senate.

Bill C-52, the Comprehensive Nuclear Test-Ban Treaty Implementation Act, had to be amended because it omitted the Senate. In November 1998, Bill C-25, to amend the National Defence Act and to make consequential amendments to other acts, had to be amended. Bill C-3, respecting DNA Identification and to make consequential amendments to the Criminal Code and other acts, had to be amended because it omitted the Senate — Senator Nolin remembers this very well, because we shared this debate. Bill C-43, to establish the Canada Customs and Revenue Agency and to amend and repeal other acts in consequence, had to be amended. Then Bill C-32 had to be amended at the other place after the deputy government leader on this side of the House pointed out to the other House that, if it were not amended at the appropriate time, it would be amended in the Senate.

These then are five recent cases where senators on both sides of the chamber had to intervene to correct this omission in bills coming to us from the other place. Senator Beaudoin is quite right in saying that we drew this matter to the minister's attention. I recall that the Deputy Leader of the Government, Senator Hays, was present at the time.

In particular, we, and I, asked the government House leader and Minister of State responsible for electoral reform whether he was prepared to consider an amendment that would restore the status of the Senate. The minister recognized this chamber's privilege of amending the legislation as it saw fit and it does not misrepresent him to describe his answer in these terms.

In a letter he sent me on April 10, the minister mentioned that there were parts of the proposed electoral legislation that did not come under the authority of the Senate, specifically the appointment of the Chief Electoral Officer, and that he saw this as a sort of precedent to explain — I would not say justify — omitting the Senate from clause 18.1. I responded to this letter from the minister with another two days later, on April 12, addressed to the minister responsible for electoral reform, in which I said as follows:

I remind you that the Senate has a vital interest in the manner in which elections are held in Canada. In 1994 and 1995, the Senate refused to pass Bills C-18 and C-19, with the result that the 1981 electoral boundaries were maintained for the coming election.

Is there a topic in which members themselves have a greater interest for their re-election than riding boundaries? Changing those boundaries can, in many cases, mean the difference between re-election and defeat. But the Senate intervened, because at stake was the democratic right of citizens to choose their representative fairly and in accordance with the spirit of the law.

I therefore do not agree, honourable senators, with the statement that, in electoral matters, because we are not elected,  
[ Senator Joyal ]

we have no business in matters that concern election to the other place. On the contrary, I believe that anything concerning the exercise of the democratic right to choose one's representatives is part of the obligations we have to ensure that bills that come before us respect the fundamental rights and freedoms of Canadians.

Following on the letter from the minister dated April 10, in which he refused in a way to give his agreement on the amendment to clause 18.1, I again argued my case to get the minister to reconsider. I reminded him that there were certain cases before the courts of Canada, that there still are cases pending, which challenge the Canada Elections Act, particularly *Figueroa v. the Attorney General of Canada*, which might eventually require amendments to election legislation, if the allegations by the applicant were confirmed. Consequently, the Elections Act would have to be amended again to reflect the provisions of the decision, and Parliament again informed of planned amendments. The role of the Senate might at that time again be discussed within the framework of the planned amendments, in order to avoid having to involve the six-month deadline which, as honourable senators are aware, is included in Bill C-2.

In the same letter, I pointed out to the minister responsible for election reform that the Solicitor General of Canada had made a commitment in a letter to the Chair of our committee, Senator Milne, on December 1, 1998 — when our committee had been informed of Bill C-3, from which the Senate had also been excluded under much the same circumstances — that he would bring in amendments re-establishing the status of the Senate in Bill C-3 at the very first available opportunity. This the minister did, in a timely fashion, with the complete approval of those of us in this chamber.

Consequently, in connection with my proposal to the minister on April 12, the minister responded to Senator Milne on May 2 in a letter, which she had recorded in the proceedings of this chamber, at the time third reading debate was beginning. I should like to quote the paragraph directly relating to the concerns of Senators Beaudoin, Nolin, Hays and Murray:

[English]

I have noted the proposal made before the Committee and I am fully disposed to offer amending section 18.1 the next time the government revises the *Canada Elections Act* to add the obligation for the Chief Electoral Officer to seek the approval of the Committees of both Houses before testing an electoral voting process in Canada.

• (1600)

[Translation]

In so doing, the minister — and Senator Milne had the entire letter read into the record — as the Solicitor General had done in December 1998, made a similar commitment to table an amendment re-establishing the status of the Senate so that we do not have to delay putting into effect the law, which, as you know, requires some six months to enable the Chief Electoral Officer to put into place the process the new legislation involves.



Accordingly, I should like to reiterate to the honourable senators our determination to ensure that each time the Senate is omitted we can obtain, either directly ourselves, the necessary amendment, or a formal written commitment from the minister to introduce an amendment as soon as possible so that the bill may do justice to the status and rights of both houses.

I point out that in the case — and Senator Nolin will remember this — of Bill C-3, there was some urgency to proceed in order to immediately authorize RCMP officials, specifically, to establish the DNA data bank. We were facing a similar time frame for putting the law into effect.

Honourable senators, I should like to express our determination, and I think all senators share the same viewpoint. I would just reiterate it here in this house. Senator Carstairs expressed it well in remarks she made about a former bill that had to be amended as well. Each time our house has before it a bill excluding the Senate, we will hold the necessary debate and take the appropriate measures to re-establish the rights of this house in accordance with the Constitution's expectation of us, which is that we all exercise our responsibilities as legislators for the benefit of all Canadians.

[English]

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I should simply associate myself with the thrust of Senator Joyal's comment with respect to why I do not support the amendment proposed by Senator Beaudoin. I would add that we have the opportunity to deal with this legislation now in a timely way. The bill has a provision which delays its coming into effect for six months after Royal Assent. It is quite possible that if we were to amend it now, it would not be possible for the House of Commons to deal with it prior to its planned summer recess.

We have the commitment of the minister responsible and a very good explanation from Senator Joyal as to why we might soon expect the opportunity to remedy what many in this place consider to be a deficiency in the legislation; that being, the absence of a requirement to involve the appropriate committee of the Senate in determining whether or not Parliament should approve an electronic voting process, which, as the bill provides, is to be investigated and tested.

I would agree more with Senator Beaudoin if, in fact, there was no undertaking from the minister, or if there were indications that the Senate would be ignored or would not be included in the approval process at the next opportunity to open this act. Accordingly, I oppose the amendment and ask honourable senators to support the bill as is.

**The Hon. the Speaker:** If no other honourable senator wishes to speak, is it your pleasure, honourable senators, to adopt the motion in amendment moved by the Honourable Senator Beaudoin?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those in favour of the amendment please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those opposed to the amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen.*

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, we have a house order to proceed with the recorded vote on this matter tomorrow.

**The Hon. the Speaker:** Honourable senators, we will do that tomorrow, then.

# CANADA TRANSPORTATION ACT COMPETITION ACT COMPETITION TRIBUNAL ACT AIR CANADA PUBLIC PARTICIPATION ACT

## BILL TO AMEND—SECOND READING

On the Order:

Resuming debate on the motion of the Honourable Senator Perrault, P.C., seconded by the Honourable Senator Fitzpatrick, for the second reading of Bill C-26, to amend the Canada Transportation Act, the Competition Act, the Competition Tribunal Act and the Air Canada Public Participation Act and to amend another Act in consequence.

**Hon. J. Michael Forrestall:** Honourable senators, I wish Senator Perrault was here because I am about to say one or two nice words about him.

**Senator Fairbairn:** I will tell him.

**Senator Forrestall:** Would the honourable senator tell Senator Perrault that I am just now getting over my mad about what he did with my naval veterans' private member's bill.

I rise today to say that I listened with interest to Senator Perrault's comments on the bill and fully appreciate the fact and the reasons why he would like to see the bill sent to committee as soon as possible.

Honourable senators, the process which brought us to this point began almost a year ago. During this period, we witnessed the failed attempt by Onex to take over both national airlines, the Minister of Transport scrambling to devise a policy to deal with the changes to the airline industry, a policy that perhaps he should have placed before Parliament two years ago. We also witnessed committee studies of the restructuring of Canada's airlines in both the Senate and the House of Commons, the emergence of Air Canada as the dominant force in air travel in Canada, and finally, now, Bill C-26. This has been quite a ride and it is not over yet by a long shot.

Some honourable senators will know that I come to this debate with assorted baggage accumulated over the years as parliamentary secretary to the Minister of Transport during the period of economic deregulation, particularly the freedom to move. I also approach this subject as Chair of the Subcommittee on Transportation Safety. I have been privileged to be the chair of this subcommittee for some time now, and we are about to release our report on air safety. I am also concerned about the impact this bill and the resultant air monopoly will have on safety for the transportation of workers and the travelling public.

I wish to commend the work done by the House of Commons transportation committee on this bill. I believe significant improvements were made. These originated, though, it is interesting to note, as opposition suggestions, and they were implemented through government amendments.

Honourable senators, I believe we should be careful in what we are about to do now. We should review this bill carefully because it sets the structure for air services in Canada for many years to come. We must be sure that the power over air transport that is shared among the Canada Transportation Agency, the Competition Tribunal, and the minister is indeed the right mix for the most appropriate group doing what they do best. From our point of view — and I believe this was echoed by many in the Standing Senate Committee on Transportation and Communications — we would like to see as much authority as possible vested in the Competition Bureau because it is there that we will get balance.

The National Transportation Agency, in my personal view, has a role with regard to the hardware, but it is the Competition Bureau that Canadians, particularly in the absence of vigorous air competition, will rely upon for protection. I believe the commission has a good feel for the problems in the airline industry and, as those of you who participated will recall, was most helpful to us when we did our study of the air mergers last fall. No longer can we afford the luxury of allowing ourselves back into the business of regulating the airline industry *per se*. There may be exceptions where some government intervention is worthy of keeping a hand in, but we cannot allow ourselves to go back into full-scale regulation. We have successfully moved away from that, and a widespread return to regulation would have disastrous effects on Canada's global competitiveness in this area.

• (1610)

I listened attentively to the remarks of my colleague, and I agree with him.

The idea of creating an office of air travel complaints is a good one. However, I believe we should go further and ensure the release of all of this type of information from the airlines on a regular basis. There should be a requirement for reports to be made public, whether through Parliament or by some other vehicle.

We should also again carefully study the divestiture of regional air carriers. We initially believed that it was reasonable for the national carrier to divest itself of the regionals. If that still makes sense, we should ensure, among other things, the job

[ Senator Forrestall ]

security of all those presently employed by regional carriers. The same assurances received by employees of the main carriers should be given to employees of regional carriers, even if the regional carrier is sold.

We must also consider the relationship of Air Canada to the international carriers that serve Canada. Due to the significant presence of international carriers, the cost of overseas flights has always remained reasonable for Canadian travellers. These international carriers have unique requirements and they should be accommodated in order to keep overseas travel competitively priced. I look forward to hearing suggestions from representatives of Cathay Pacific, BAC, and others, on how their needs can be accommodated.

I believe that there is some urgency to get on with this and that the matter should be referred to the Standing Senate Committee on Transport and Communications. Once there, the committee will have the responsibility of examining the difficulty that the Canadian travelling public has had in some centres.

We appreciate the difficulties Air Canada has experienced in implementing the changes that had to be made, but these problems must be ironed out, and they will be ironed out gradually. I personally have had excellent service from Air Canada and Canadian since the merger began, but that has not been the experience of everyone.

The airline needs good and sound legislation to be developed in consultation with professionals in the industry. This side believes that matter should be sent to the appropriate committee for study before the summer adjournment.

**Hon. Nicholas W. Taylor:** Honourable senators, as an old-time westerner, I know that the development of the Prairies has very much depended on transportation. Those of us who live in the more densely populated strip in the south of Canada worry about plane reservations, lost baggage, and so on. This bill touches upon, but not in sufficient detail, the historical significance of transportation in the development of Canada in any area outside the temperate zones, particularly near the Arctic. Perhaps we can learn more about that at committee stage.

We need only think back to the beginnings of Canada when that great Liberal Conservative, John A. Macdonald, put together a national transportation policy. If we had taken the approach to transportation then that we do now, with the bottom line being getting rid of subsidies, we would not have a Canada. British Columbia would not have joined us and the Prairies would not have been developed.

If you have any doubt about that, at your first opportunity spin a globe. You will notice that North America is the only continent with any development at its centre. There is no development in the centre of Asia, Africa, or Australasia. North America is the exception because our forefathers had the foresight to subsidize an east-west transportation network. In the United States of America, they are fortunate to have the Mississippi River running north-south through the middle of the country which provides a transportation route. However, in Canada we had to fight natural forces, and we must give the credit to John A. Macdonald for forming that band of pink from coast to coast.



Today, we are facing the same challenge as John A. Macdonald faced. We need to build a link from the North to the South, with little in between. This cannot be done with a balanced budget. The people in the North depend on air transportation.

This bill deals with unimportant details such as whether meals are hot, rather than providing an incentive such as that provided to the Canadian Pacific Railway and the Canadian National Railway.

• (1620)

The whole central part of Canada — the Prairies, really — was developed over the last 100 years because the government put money into it. The East and West and settled portions of Canada put money into transportation so that we could transport our grain, beef and hogs out to the markets of the world and bring settlers in. The same thing has to happen in the North. To sit back and leave it to the odd little diamond mine or to fur trapping and to tell northerners they have to rely on an airline that has no competition from roads or rail is very unfair indeed. We are ignoring our greatest frontier — a frontier which might be just as important 80 to 100 years from now as the Prairies are to today's Canada. After all, 100 years ago, the Prairies were considered just as far out and out of the way as our North is today.

I think we need some great imagination from both sides of this house, and from both sides of the other place, for our national transportation policy to develop our North and bring northerners in to be equal partners in Canada. Of course, they need a little help, but just look at what has happened on the Prairies. We are now withdrawing subsidies, because they have developed and can stand on their own. Why should we deny the people who live in the high Arctic and the middle Arctic the same opportunities that John A. Macdonald and others like him gave to the Prairie provinces to develop when they were no man's land — or no person's land?

Just look at any other continent on the globe. They have not developed their centres because they did not have a political tie-in on either side to put in the subsidies to develop the centre. I arrived back home from Kazakhstan recently. It might as well have been Alberta in 1905. My point is that the centres of other continents have not been developed, and they will not be developed if everyone relies on the laws of so-called free enterprise where the bottom line counts for everything. Development will only occur where the people are numerous, and the other areas will be left out.

As to this bill, as far as I can see, we can rectify problems where the airlines may be shafting the consumer, but we will not be doing anything in the way of actually putting in a subsidy or a grant, or some sort of integrated system, to help with the transportation costs of the people in the Far North in order to bring them close to equalling what we pay ourselves.

**Hon. Roch Bolduc:** Will the honourable senator accept a question?

**Senator Taylor:** Certainly.

**Senator Bolduc:** Senator Taylor talked about Africa and the United States. What about South America?

**Senator Taylor:** That is another continent on which there is no development in the central core. Sorry, I overlooked that. I thank Senator Bolduc. That is another continent where nothing has happened because they have done nothing on their transportation policy, except on the fringe.

**Hon. Raymond J. Perrault:** Honourable senators —

**The Hon. the Speaker *pro tempore*:** Honourable senators, I wish to inform the Senate that if Honourable Senator Perrault speaks now, his speech will have the effect of closing debate on second reading.

**Senator Perrault:** Honourable senators, I thank the eloquent spokesman for the opposition in this chamber, Senator Forrestall, for his constructive remarks.

**Some Hon. Senators:** Hear, hear!

**Senator Perrault:** Air travel is of immense importance to all Canadians. This measure, Bill C-26, deserves the closest possible study. I am in total agreement with the honourable senator on that point.

Those senators who are not actual members of the Standing Senate Committee on Transport and Communications may nevertheless want to interest themselves in this legislation. Honourable senators know that it is possible to attend the committee's meetings, although they may not have voting privileges. I suggest to honourable senators that air travel is of immense importance to all of us, wherever we live, and it is our responsibility to ensure that the best possible legislation is passed to help people with their travel challenges in our very large country.

Honourable senators, I will not get into a long discussion of the bill. It is better that we get it to committee as quickly as possible. I thank Senator Taylor for his interesting and always useful observations. He might wish to develop them in committee.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

Motion agreed to and bill read second time.

REFERRED TO COMMITTEE

**The Hon. the Speaker *pro tempore*:** Honourable senators, when shall this bill be read the third time?

On motion of Senator Perrault, bill referred to the Standing Senate Committee on Transport and Communications.

• (1630)

## PRIVACY COMMISSIONER

### RECEIVED IN COMMITTEE OF THE WHOLE

The Senate in Committee of the Whole in order to receive the Privacy Commissioner, Mr. Bruce Phillips, for the purpose of discussing the work of this office.

The Senate was accordingly adjourned during pleasure and put into Committee of the Whole, the Honourable Rose-Marie Losier-Cool in the Chair.

[Translation]

**The Chairman:** Honourable senators, before hearing the witness in Committee of the Whole, allow me to draw your attention to rule 83, which states, and I quote:

When the Senate is put into Committee of the Whole every Senator shall sit in the place assigned to that Senator. A Senator who desires to speak shall rise and address the Chair.

The last time Canada's Privacy Commissioner appeared before the Committee of the Whole, it was decided to dispense with this rule. Is it your pleasure, honourable senators, to dispense with rule 83?

**Hon. Senators:** Agreed.

[English]

**Senator Hays:** Honourable senators, I move that Mr. Bruce Phillips, Privacy Commissioner, be escorted to a seat in the chamber.

**The Chairman:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

[Translation]

**The Chairman:** On behalf of all senators, I welcome Mr. Phillips, Canada's Privacy Commissioner.

[English]

Mr. Phillips, do you have an opening statement?

**Mr. Bruce Phillips, Privacy Commissioner:** Honourable senators, thank you very much for having me back. I think the most enjoyable thing I have done since I took on this job was [The Hon. the Speaker pro tempore]

coming to a session of the Committee of the Whole Senate about a year and a half ago. I am not trying to flatter you; I mean it. It is kind of fun to come to a committee where people are actually talking to the witness instead of to each other most of the time. That is no reflection on any other place.

Second, this may well be my valedictory to the Senate since, unless some miracle intervenes, I will be packing my bags in a few months to take retirement. Well deserved? Well, some other people will have to decide that.

Last year, I gave you, at the outset of my presentation, a 10-minute disposition on the philosophy and ethics of privacy. I do not propose to repeat it in any great detail. I want to remind you of one or two basic points.

First, with respect to my position, for those of you who may not have been here last year or heard me speak on other occasions, the Office of the Privacy Commissioner is one of a very few number of offices in the entire federal establishment that exists and requires a vote of approval for the nominee by both Houses of Parliament. The reason for that is to certify their independence of any particular government department or agency since all of us are involved in matters that require an arm's-length relationship. Some others are the Information Commissioner, the Chief Electoral Officer and the Auditor General. It is a wonderful position to occupy because it keeps the incumbent focused on the issue that he or she is there to serve. There is no other consideration in a good commissioner's mind than serving that issue and protecting the credibility and the independence of the office.

The issue of privacy is frequently misunderstood. People think it is essentially denoting "a means of hiding things." Privacy is not the business of hiding things. Privacy is a shorthand word that covers a very complex and comprehensive set of rights which touch almost every aspect of human life. If you think of privacy in the context of being able to control matters concerning yourself and what it is that you wish the world to know about you, you begin to come closer to the notion of privacy.

Privacy has its origins in the very beginning mists of human history. The ancient British notion of a man's home being his castle — now a person's home being his or her castle — very much expresses the idea. If you really respect someone, you will grant that person a right to privacy. If that person respects you, that person will give you a right to your privacy. Supreme Court Justice Gerard La Forest expressed it best when he said, "Privacy is the concept that lies at the heart of freedom." I think that is right. "Privacy" is just another word for freedom.

I will quickly review some of the issues that arose during the past year. Quite apart from one or two more recent events, we have had an extraordinary year in this field. The most important development in the privacy field in the last 15 or 20 years in this country occurred in the course of last year, partly and significantly due to this particular chamber. I am referring to Bill C-6, the Protection of Personal Information and Electronic Documents Act.



The genesis of Bill C-6 goes back some distance to the publication of privacy guidelines by the Organization for Economic Co-operation and Development, issued roughly 20 years ago, which set forth principles for government to govern themselves by in the collection, use and disclosure of people's personal data.

• (1640)

The privacy guidelines were accepted by the Government of Canada. Departments of the government were urged to follow them, as was the private sector. The government had more success with the public sector than it did with the private sector, which largely ignored them. However, the government acted by passing the Privacy Act that has governed, for many years, the collection, use, disclosure and retention of information by the Government of Canada.

The private sector, with the advantages of modern technology, was leaping ahead with ever more massive collections and use of data. It essentially became an informational jungle, where there were no rules. All of the jaw-boning and arm-twisting that was attempted by people such as myself had very little effect. Some institutions — notably financial — responded by passing voluntary codes of privacy practice, which helped, but only a little.

The Canadian Direct Marketing Association and others were, I think, outstanding in the field of policing their activities during that period. However, it became evident three or four years ago that if businesses were to continue to enjoy the confidence and trust of the clientele and consumers of Canada, something more had to be done.

Another compelling reason was the adoption by the European Community several years ago of a common data protection set of principles that were applicable to all states of the European Community. That set of principles essentially authorized them to withhold data transfers to states where, in their view, adequate data protection did not exist. At that stage of the game, Canada certainly was one of those countries.

Partly in an effort to defend Canada's trade abroad and to guarantee continuing rational data flows from country to country, and partly because of the increasing clamour in Canada, Bill C-6 was born.

Those honourable senators who were not directly involved at the legislative end of the process must realize that Bill C-6 was not an easy exercise. It was strenuously opposed — sometimes publicly, while on other occasions not so publicly — by many special interests groups. I must say, in as non-partisan a way as possible, that it took a good deal of resolve on the part of the government of the day, with the help, I am sure, of people on all sides, to ensure that Bill C-6 came to pass. It will become law at the end of the year. Three years hence, unless the provinces act in conformity with the principles in Bill C-6, it will cover provincial informational traffic, as well as that which now falls under the jurisdiction of the Parliament of Canada. That is almost

akin to a revolution. Canada is the only country in North America that has such a comprehensive statute covering the private sector.

There are continuing issues, such as the problems in respect of the social insurance number. We are aware of the opinion of the Auditor General on that issue. In spite of the efforts to fix the issue, the underlying problem of the social insurance number has not been addressed. When the social insurance number became a card to certify eligibility for certain government programs in the 1960s — I was present in the galleries listening to those debates — fears were expressed that the card would be used as an everyday working identification card. Qualified assurances were given that such a thing could not happen, but it did. Everyone now knows that you can hardly get on a bus and go to a store without your social insurance number.

The problem is that the government has never stipulated in law that it would be unlawful to demand the production of that card for other than specified uses. Although I believe that was recommended again during the course of the last study, it has not been acted upon. As a consequence, the social insurance number will continue to be as much a nuisance as a help to us.

I am aware that the Senate is seized of the whole debate about privacy and its relationship to health information. That is probably the next privacy battleground, although I can think of one or two others that we might discuss this afternoon.

We, in our office, are baffled, to a certain extent, by the health privacy debate. That is largely because of the immensity of the volume of information involved, and the very large number of players that are in the field, both in the public and private sectors. We must candidly admit that we do not know how all of this information is managed. We have much anecdotal evidence and information from a variety of sources. Many doctors tell us that they are terribly concerned because they feel that the historic, Hippocratic oath-bound principles of patient-doctor confidentiality are no longer alive because the information is now used by too many hands for payment purposes, verification purposes, government studies and so on. Even the doctors cannot tell you with any assurance where all of the information is used.

The first problem in dealing with the health information issue is to find out where it originates, who has it, and where it goes. The committee of the senate that proposes to study this issue will be pioneering in this field. I believe that if, as some people advocate, health information is to be treated by a separate statute, other than Bill C-6, the kind of thing that you are about to do is absolutely *sine qua non* — a prerequisite — to that exercise. We will be as interested as anyone else in the evidence that is given to that committee.

I do not know whether to venture into the minefield of the census data now or later. It arose at our meeting one year ago and continues to be a concern of mine. I was treated gently by the Senate, much more gently than I was in other quarters, with respect to the census issue.

My first concern is with the confidentiality issue. No one has been able to satisfy me on this point in respect of census information. There are two regulations on the books covering the 1906 and 1911 censuses that state that census data shall be kept confidential and not used for any other purpose. There is a 1918 law on the books that states essentially the same thing. Information printed on each of the millions of census forms distributed to the Canadian public states that they are enjoined to fill out the form, no matter how intrusive they might feel it is, under pain of the penalty of the law. However, that form also provides an unqualified guarantee of secrecy and confidentiality.

The case could be presented by someone — and I have never disputed the legitimate interest of historians and genealogists in this type of information, although I may feel differently about their right to it — to get rid of that guarantee because the information is extremely valuable to them. What then becomes — and I do not speak alone because the Chief Statistician would say this more emphatically than I — of the confidence and the trust of the Canadian public in the given word of its elected government? If, having given all of this information with that undertaking clearly before it, the public is now told, “Well, things have changed so retroactively that we will wipe out the information,” then that raises an ethical question that must be addressed and answered by those people who would seek to set the information aside.

The question of the merits of the case for access by historians and genealogists is something else. I appeared before the expert panel that was appointed by the Minister of Industry to look into this question of what to do about census records in response to the strong representations that were made by the historical and genealogical committee. Whatever they may make about the confidentiality guarantee, I suggested to them that, if they still wish to recommend access to this census data, then surely a distinction must be drawn between census data and other types of personal information.

• (1650)

The long form on the Canadian census since 1971 is the single most comprehensive gathering of intimate personal data about Canadians ever conducted. It includes all kinds of information that people normally might be extremely sensitive about disclosing. I am talking about sex, sex preferences — which was asked in the latest one I saw — family histories, income and lifestyle. There is an enormous amount of data on that census.

It is no longer simply a census of the population. It is a socio-economic study of the most comprehensive kind. No one would fail to understand why that would be of interest to historians and academics.

My point, therefore, is that if they are to make more census data public, surely it must be restricted to census data, that is, a count of the population, name, address, and so on, as is contained in the earlier censuses. That distinction has yet to be drawn. I did not hear it made at the expert panel on this subject. It is possibly the beginnings of a compromise answer to this problem.

[ Mr. Phillips ]

I would now defer to honourable senators.

If the honourable senator from Fredericton is here, I am sorry that I do not have your star pupil with me today. He is out of town giving a speech. I know you wanted to single him out because he is a very bright fellow.

I thank honourable senators.

**Senator Lynch-Staunton:** Welcome, Mr. Phillips. I am sorry to hear you say that this may be your farewell appearance. If it is, I wish you well. I thank you for the great efforts and commitment you have made to privacy, in an environment which is not the most easy, and where privacy is more and more difficult to secure. Your efforts are exemplary. I hope that your successor will carry on in the way that you have set up your office, and that is in favour of that important element in our society which is privacy.

You made reference to the census, a subject on which I wished to focus my questions. However, I think you have already expressed your views on that subject.

“Common law” refers to two people of the opposite sex or of the same sex who live together as a couple but who are not legally married to each other. The final question which was published in the *Canada Gazette* is a little less direct. It states that “common law” refers to two people who live together as a couple but who are not legally married to each other. The definition may change, but the intent of the information sought is the same. First, this is the sort of information which I have difficulty in accepting as necessary in a census. Second, if the law is changed, it is information which may well be revealed in the years to come, and it is not information that many people answering that question would want revealed.

The other question which I find very intrusive is Question No. 51, which asks for a detailed report on income, employment, government income, other income, dividends, and so forth. The explanation given for that question is that, while most Canadians file income tax returns, many Canadians do not, so this is to supplement the information that the Department of Revenue does not have available. When we file our income tax returns, whether we send them electronically or by mail, we like to think that they go directly to the person to whom they are intended. However, this information is not guaranteed to have the confidentiality it deserves.

You have pointed out in your report on the challenge to privacy that in rural areas in particular the enumerators are friends and neighbours of the persons who are given the long form to fill out, and they have been responsible thus far in checking the answers to ensure, not that they are accurate, but that they have been answered. In many cases, therefore, neighbours and friends who are enumerators have available to them what the individual who filled out the form has felt has been confidential all along, but within a week his neighbour has secured this information. You do say in your report that there have been attempts to bypass the local enumerator, but that, so far, those efforts have not proven to be foolproof.



After that introduction, sir, my question is twofold. First, do you believe that some of the information asked for in the census is of value to the census takers? Second, what advice would you offer the government in order to guarantee as much as possible the confidentiality of the census information?

By the way, the common law question also applies in the short form. All Canadians have to answer that question, not only those who answer the questions on the long form.

**Mr. Phillips:** By "census taker" do you mean the canvasser or Statistics Canada?

**Senator Lynch-Staunton:** The canvasser, the person who delivers the form and to whom it is returned.

**Senator Finestone:** They are obliged to do that.

**Senator Lynch-Staunton:** If you fill out the long form, you must give it to someone. That person has to check that the questions have been answered. That person may be your next-door neighbour.

**Senator Finestone:** I do not disagree with you, senator. I am saying it is an obligation under the law.

**Senator Hays:** Perhaps we might hear from Mr. Phillips.

**Mr. Phillips:** That is a process question, honourable senators. We have received a substantial number of complaints on that very point concerning the census and the fact that, in the verification of the filling out of the forms, neighbours and friends frequently become involved, particularly in small communities. People get very upset by that, which I think attests to the sensitivity of the information. People are not nearly so upset if they feel that it is going to a secure place in Ottawa, which is behind very carefully guarded doors. We have taken that up with Statistics Canada. They responded by putting in place, on an experimental basis, a process by which the form could circumvent the local verification process and go directly to Ottawa. However, my recollection is that they did not like the results. I think the reason was that it was too cumbersome and too slow. It has been discontinued, and they are now trying out something else.

I will say on behalf of Statistics Canada that at least they are aware of this problem and are trying to fix it. Thus far, they have not been able to do so.

The issue of the intrusiveness of questions is not something I can answer with anything more than a personal opinion. There is no doubt that the questions are intrusive. Of course, any disclosure of personal information to a government institution that is compulsory is intrusive — no matter what the information. This tends to be of an extremely intimate nature. You have just read off some of the questions, senator.

The Statistics Canada people have a very complicated process for deciding what goes on to the census form. They have a number of advisory committees, educational, socio-economic, medical and so on, composed of people from both the public and

private sector who submit to Statistics Canada a list of questions or issues which they think are of sufficient importance as to warrant inclusion in a census. Those are all mulled over, over a number of years, and finally they find their way on to the census form.

• (1700)

**Senator Murray:** Who must Statistics Canada convince at the end of the day that the information they are seeking from individual citizens is absolutely required for the purposes of the governance of the country as distinct from the purposes of the academy? Do they have to convince the cabinet?

**Mr. Phillips:** Yes, that is right. Once Statistics Canada has compiled its list of questions and developed its census form, that is submitted to cabinet for approval.

**Senator Murray:** What do you have to say about it? Does the Privacy Commissioner have the opportunity to say, "This is really not needed for the purposes of governance; it may be interesting for the academy, but it is not needed for the census"?

**Mr. Phillips:** No, the Privacy Commissioner is not consulted on the questions that are to be included on the form. Quite frankly, senator, I am not sure that the Privacy Commissioner should have such a role. Statistics Canada, which does that operation on behalf of a great many interests, has the responsibility of justifying its questions, and I think they have to be justified to persons other than myself.

**Senator Murray:** Who weighs in on behalf of privacy when the draft questionnaire is placed before the cabinet? Is there anyone who says "no" to a particular question?

**Mr. Phillips:** No one from my office.

**Senator Milne:** Mr. Phillips, I want to talk about the historic census, not today's census.

For the past 100 years, there has been a balance in Canada between a right to privacy and a right to use personal information for historical research. Of course, you have anticipated that I would ask you this question. You have also written quite a section in your report about the historic census records. I have read your presentation to the expert panel.

I am fairly certain that your position, and the position you have taken in your report, is based on an opinion by lawyers of the Department of Justice that is, I believe, fundamentally flawed. Statistics Canada requested this opinion. It is too bad that the lawyers were in such a hurry. If they had just read a few pages further on, or even a few lines further on, they would have found in the 1906 instructions that the census takers were directed to write clearly because the census was intended to form a permanent record to be held in the archives of the Dominion. At that time, everything that was held in the archives was open to the public. It was quite clear that the lawmakers of that time and the legislatures of that time intended that to be a permanent, eventually public record. The implicit intent was that the census would eventually be open to the public.

This balance between a right to privacy and a right to historic census data was debated again in the 1980s and reaffirmed in a modern context with the passage of access to information and privacy legislation. Speaking of privacy legislation, I thank you for your words about Bill C-6, because my committee dealt with that bill.

Why is there now such an urgent need to overturn this long-established, equitable and historic balance? What you are actually doing is retroactively seeking to overturn the stated intentions of the legislatures at that time. After 100 years, the defence of privacy rights is suddenly paramount and overriding the legitimate and intended use of personal information for research purposes.

Do you want to answer that question before I ask my second question?

**Mr. Phillips:** I might as well get the whole blast.

**Senator Milne:** I am being nice.

Why do you not accept the logic of the passage of three interrelated pieces of legislation — the Privacy Act, the Access to Information Act and the National Archives Act of Canada — as well as the formal interpretation of the European Parliament, whose tough privacy provisions were what generated the push to pass Bill C-6 in Canada? The archival retention of government records, whether they contain personal information or not, and their use for historical and statistical research is a use consistent with the purpose for which the material was originally collected and therefore does not require additional consent. Otherwise, why would the government have archives at all for its own records?

**The Chairman:** I wish to remind senators that, at the beginning, we passed a motion to waive rule 83, but we did not waive rule 84, which states that a senator should not ask a question for a longer time than 10 minutes. You also have the chance to ask a second question. You may ask many questions, but one question may not be more than 10 minutes in length.

Please, Mr. Phillips, perhaps you could respond to Senator Milne.

Senator Milne, you will have a chance to ask another question.

**Mr. Phillips:** Perhaps when we have lunch, senator. You have asked a number of questions, and it will take me quite a while to deal with all of them.

As a consequence, what do I make of the current Statistics Act, which states:

17.(1) Except for the purpose of communicating information in accordance with any conditions of an agreement made under section 11 or 12...

(a) no person, other than a person employed or deemed to be employed under this Act, and sworn under section 6, shall be permitted to examine any identifiable individual return made for the purposes of this Act;

[ Senator Milne ]

(b) no person who has been sworn under section 6 shall disclose or knowingly cause to be disclosed, by any means, any information obtained under this Act in such a manner that it is possible from the disclosure to relate the particulars obtained...

I am sure you read that.

You have also, I am sure, read the language contained in the last census guide, which states that the confidentiality of your census form is protected by law. All Statistics Canada staff take an oath of secrecy and only employees who work with census data see your form. Your personal census information cannot be given to anyone outside Statistics Canada — not the police, not another government department, not another person. This is your right. Every Canadian gets that guarantee with the census form.

With the current Statistics Act and that guarantee, plus the information that was contained in the regulations of 1906 and 1911 and the amendment in 1918, I can look at that as a layman. Senator, I was not guided in my interpretation of this matter by the opinions of the Department of Justice but by our own lay view of it, and the information and advice we received from our own legal staff. I do not think we want to get ourselves involved in that kind of debate anyway. I think we have to debate this issue on more philosophic and ethical grounds.

Let me put it to you this way: If I have lunch with you next week, ask you all of the questions that are on that form and tell you that I want to write a book about you, I think you would say "Just a minute." The argument, and I think there would be general agreement on this point, is that the modern census asks for so much intimate information that any disclosure in the near term should be absolutely prohibited. The argument, therefore, turns on whether there is any privacy right with the passage of time or whether it diminishes and finally is extinguished altogether.

**Senator Milne:** You agreed with that last year.

**Mr. Phillips:** I think I have to agree with the fact that the right to privacy might diminish to a certain extent. I do not have any objection personally to a lot of my information being divulged after I am dead, but I can only speak for myself. The real element of respect for privacy is choice and individual decision.

• (1710)

For any particular interest group to express and assert a right to my information is something that causes me great difficulty now, and will continue to cause me difficulty until I breathe my last breath. I may well make provision for the disposal of my personal information after my death, and I should like to have respected. Some of that information might be contained in a census.

The question here is whether academics and historians, who have a special interest in this matter, have a special right to override my rights to protect the privacy and confidentiality of my papers. I have difficulty answering that question, and it is one that must be asked.



I feel a little differently about genealogists than I do about historians. There is a family interest frequently with real-time living consequences if people are unable to obtain genealogical information about their family backgrounds. It is not unreasonable to make adequate provision to take care of that problem.

I have the greatest respect, senator, for Canadian historians and Canadian academics. I read many of them. However, I do not think that they are on very good ethical ground if they are saying that, because it is there, they have a right to it, no matter what its value may be.

Journalists could make the same claim. They have a perfect right under a free press to gather what information they can, a constitutional right. However, there is nothing in the Constitution that transgresses or abrogates my right to say to a journalist, "No, I am not giving it to you," and "You cannot have it."

How will we make these distinctions between a person who describes himself or herself as an historian or a journalist, who may write for quarterly magazines, and who indicates that their work may be historical in nature as well? There is a real problem here on the issue of personal privacy rights and whether historians are a special group of people who should be allowed to set those rights aside.

I concede that the question of time is the basis of a good debate. Ninety-two years is the present allocation. I have looked at some of those early census forms and I do not think many people would object to that kind of data being made available for research purposes. However, let us fast-forward to 1971 and all the questions that are on that census form. I think many people would say that living, dead or otherwise, they do not want that information to be given out. We must also start considering that issue.

Some issues deserve a thorough public debate, and I am trying not to be dogmatic about this, but rather to make the best case I can.

**Senator Milne:** I believe there has never been a complaint about the release of historic census data. As far as I have been able to discover in my search and from the search done by others of the Canadian, British and American records — and over the last 92 years that adds up to about 160 million people — there has never been one complaint in any one of the three countries.

At present, in Newfoundland, the 1945 census information is available to the public and there have been no complaints whatsoever. Thus, I have some problems with lengthening the period of time. I think that 92 years is a perfectly reasonable and historically valid period of time in Canada. On the one hand, census data is time sensitive. On the other hand, if we were to be bound by the wishes of the dead, we would all be carrying stones up pyramids for some long dead pharaoh.

**Mr. Phillips:** Until somebody invented a better machine.

I understand what you say. However, there must be some more examination of these issues. That is the best case I can make.

It is not for me to ask questions here, so I will try to make my point otherwise. I ask myself: What is the point of writing a will in which I wish to make some disposition of my personal papers when half of the information is being let out anyway? Is there a complete extinction of a person's rights to privacy because of death? I think not; otherwise, we would not bother writing wills.

**Senator Milne:** Am I correct that the provisions of a will extend 25 years after death?

**Mr. Phillips:** The Privacy Act stipulates that information cannot be disclosed for 20 years after the death of a person. If I were drafting the bill, I would have changed that provision.

**Senator Carstairs:** Mr. Phillips, I should like to address a slightly different area. You mentioned the social insurance number. My sense is that people feel intimidated and do not want to provide information that they do not have to give, but they do because they feel a certain pressure to submit that information. I will give you an example.

Standing in line at Canadian Tire, I was among a group of people, all passing in their Visas or alternate credit cards, and underneath the line provided for their signature was another space where they were to provide their telephone number. Six people in the line all provided their phone numbers, but I refused to provide that information and, to be fair, the clerk did not question me when I did not fill in that space. Canadians feel that they must give information if it is requested. How do you deal with that as an issue?

**Mr. Phillips:** That is a very good point. The only way you can deal with that, senator, is to educate the public about the hazards involved in voluntarily giving out personal information. Companies will ordinarily ask for more information than is ever required to do a transaction because they want it for their files for marketing purposes. If you decline to give it, 99 times out of 100, it will make no difference to them. They will transact the business in any event. However, if you wish to provide the information, many inducements are offered, inducements such as lowered premiums. In a sense, they are offering to pay you, or at least give you a chance to get something for nothing.

The interest of Canadians in knowing what happens to their information is growing. I think recent events have probably demonstrated that more clearly than anything else to which I could point.

I do not want to reopen a discussion about the census here, but if people do not know — and if they are dead it is hard to know — then you will not get many complaints. That is why many institutions and companies do not make a point of telling the public what they are doing with the information.

We are now reaching a new age. Bill C-6 will see to that. Companies will have to disclose their informational practices. That is the way to develop a civilized relationship. You must have transparency so that both sides know what is going on.

**Senator Carstairs:** Do you know of any educational programs, particularly in high schools or of any junior high programs which explain privacy rights to young people?

**Mr. Phillips:** Yes. I do. Currently, the Privacy Commissioner of Ontario is developing a program for distribution throughout the Ontario school system, primarily at the secondary and post-secondary levels, dealing with these consumer issues.

My office has never had a public education mandate. However, under Bill C-6, we will be given one. If we are given some reasonable funds to do it, which is always the next important question, we will be doing that kind of work.

**Senator Kinsella:** Building on this point, commissioner, at page 48 of your report you mentioned that, heretofore, the Commissioner has no legislative mandate to educate the public about information privacy rights. Are you satisfied that need will be responded to in the new regime?

• 17201

**Mr. Phillips:** The answer to that question is both practical and theoretical. No privacy commissioner would ever be satisfied that enough funds were made available for that purpose because it is open-ended. That is to say, the more dollars you get, the more educational work you can do. If the question is whether we will have enough for it, well, it will not be of a Cadillac style. Our funding discussions are still going on and they will be ample, as far as I can see, for the introductory phases of Bill C-6. However, whether there will be enough left over for a serious public education mandate remains to be seen.

I have to grant the Treasury Board some slack here because it is very difficult at this stage of the game to know how much business Bill C-6 will generate by way of complaint investigations, audits, and so on, which can chew up resources in a great hurry. My hope is that the volume will not be great and that, in the beginning phases of Bill C-6, it will take a while to catch on so that we can get a good educational program going, but I just do not know.

**Senator Kinsella:** I should like to draw the attention of honourable senators to page 65 of your report, where you speak of the Longitudinal Labour Force File, which has been very much in the news this last little while. In the second paragraph, on page 65, you write:

Successive Privacy Commissioners have assured Canadians that there was no single federal government file, or profile about them. We were wrong...

When, commissioner, did your office come to the conclusion that you were wrong about that and there was a single government file on Canadians?

**Mr. Phillips:** I will try to give you the short history of the Longitudinal Labour Force File and our involvement. First, you must understand that we have limited audit resources. I had four people available at that time, in 1997. Given the colossal size of HRDC, and because it was responsible for supervising so many programs and originating programs that dealt with the personal lives of Canadians, we wanted to have a look at their personal information holdings and the management thereof. I wrote to the then deputy minister and asked if, rather than invoking our

formal audit authority, a team could come over and do a thorough sit-down review of all their databases to see what was in them and what was happening.

I had 100 per cent cooperation in that review. I want to make that clear. In the course of going over all these holdings, we encountered the Longitudinal Labour Force File. We asked what it was and they told us. My staff examined it and had some questions about it.

**Senator Kinsella:** When was that?

**Mr. Phillips:** It would have been in 1998 that we responded formally to the department, saying that we were very concerned about the Longitudinal Labour Force File.

**Senator Kinsella:** When was the first time that Canadians were made aware of the existence of a single file?

**Mr. Phillips:** In the broad sense of the general public at large knowing about it, this would have occurred as a consequence of this year's annual report. When we encountered the Longitudinal Labour Force File, we then engaged in a conversation back and forth, over the ensuing two years, in an effort to redress what I thought were serious problems. Having failed to get it done that way, I felt it was necessary, at that stage of the game, to inform Parliament.

The duty of the commissioner is to inform Parliament about significant developments in information management by the government. That is why it is there.

**Senator Kinsella:** Maybe other senators will be pursuing this matter.

[Translation]

**Senator Bolduc:** Mr. Phillips, today we heard Minister Stewart say that she was dismantling the file. Are you satisfied with the minister's decision, or are there still problems bothering you?

[English]

**Mr. Phillips:** I am not just satisfied with the minister's decision; I am delighted by it. I say this on behalf of Minister Stewart. In so doing, I realize that I may be treading into places I ought not to go, but it has been my experience from past dealings with this particular minister on privacy issues that when she has been fully informed and on top of the case, she has responded very quickly. The protocol they presented to me last week for discussions could not have been much improved upon if I had written it myself. It contains the ingredients for the proper management of data in a way that allows for transparency in public reporting so that people know what is going on. It has put in place a proper process for conducting research projects by which, first, you define the project and identify the information necessary for its completion, and then you go out and get the information. Second, it subjects all those research projects to a proper process of review by qualified experts, and it involves the Office of the Privacy Commissioner in a monitoring capacity. Third, the minister has agreed that the legal framework surrounding database usage needs to be improved and has obtained the concurrence of the Minister of Justice. I expect that will be addressed. That is one of the things we have been pressing for.



There are a couple of other issues there. An advisory committee will be established — not a review committee, which might have been a little better — and my office will be a member of that committee, which will look at data-based management in the department. Those are all things that were not present in the database as it was constructed originally.

Essentially, what we had there was an ever-growing mountain, lake, ocean — you name it. It was “ever-growing” because they kept dumping in more and more personal information for no defined purpose except “research,” which is a fairly elastic term. It stood the whole process on its head. First, we will get all this information; then we will all sit around and think of a way to use it. That was bad to begin with.

I have no doubt that the people who did this were well motivated. I do not have any problem there. As one of my staff said, doubtless those people thought they were doing the right thing, but were they asking the right questions? Yes, the minister was quite right when she said in her earlier responses that the database did comply with the strict letter of the Privacy Act. However, it did not, in my opinion, comply with the spirit of the act as expressed by the guiding principles that are at the forefront of that act, which are, as far as this database is concerned, that you do not use information for unrelated purposes without the consent of the person from whom you received it in the first place. You do not disclose it without the consent of the person from whom you received it. Those are the rock-bottom principles of respect for people's privacy rights. This database did not comply.

There are extremists in my office, and we recognize — and so does the Privacy Act — that there are occasions when governments, for good reasons, must collect information or use it or disclose it without getting consent. However, constructing a database of this nature for such a vaguely defined purpose did not comply with the spirit of the act. It met the test of the law, but when you are dealing with a rights issue, more than a lawyer's view of the law matters. There are essential questions: What is the right thing to do? Does this reflect the spirit and the ethics as well as the letter of the law?

**Senator Bolduc:** Are you confident that the message is clear that the information contained in our tax returns will remain with the Department of Revenue?

• (1730)

**Mr. Phillips:** No, I cannot give you that guarantee. I can tell you that the income tax information that was contained in that database was, in fact, returned to Revenue Canada. That is because my staff was there to see that done. It is now back with Revenue Canada. That is not to say that Revenue Canada will not, at some future time, share it with somebody else.

There is a common misconception among the public at large that information given to Revenue Canada goes there, stops there, and goes nowhere else. That is quite wrong. Revenue Canada has hundreds of information-sharing agreements with other departments of government and other governments, both domestic and foreign, for the sharing of income tax information. Let us not all panic about that. Some of this is necessary sharing.

**Senator Bolduc:** I can understand that process when it is between revenue departments. It is reasonable. The federal service is doing its job. However, I was scandalized when I heard that our tax reform information was going outside of that department. I have been in the civil service for 35 years.

**Mr. Phillips:** There is one point I want to make about all of this. The essential element of transparency was absent here, and it is also absent with respect to Revenue Canada's information-sharing agreements. I think it is high time that a lot more attention be paid to informing the public about what the government is doing. The more the public knows, the less alarmed the public will be.

There has been an extraordinary reaction to this labour force file. However, I think there should be a much better educated public about the necessity and uses of information, and by and large the very responsible way in which it is handled. If that information were out, and if the government made a point of regularly informing the public, we would not have the kinds of responses that we got with this issue. We might not have the labour force file, to be sure, but trust and confidence depends on knowing what is happening. That is the bottom line.

**Senator Andreychuk:** Perhaps I could follow up in that area. A number of bills on taxation about the sharing of information with other countries have come through the Senate. It was a surprise to us to find out that, when we sign a tax agreement with another country, Revenue Canada, and its predecessor, would assess whether a certain tax system was viable and whether those other countries had processes and procedures of which we should be aware.

Does the Canadian public know that, when they work in another country where we have signed a tax agreement, their information will be processed by that government and that that Canadian will not have even the assurances, however minimal, we have in Canada? Have you looked at that area at all? It is a growing field because we are signing taxation agreements with a whole host of countries with which we did not anticipate signing such agreements.

**Mr. Phillips:** I regret to say that the answer to that, senator, is no. It is a darned good idea, and maybe sometime we will get around to it. We will certainly take note of what has been said here.

I must tell this committee that, early in my own time as a privacy commissioner, while considering the act and the very broad authorities that are given to the government for sharing information in a way that circumvents the basic principles of the act, I did try to get a handle on the scope of information sharing in the government. We circulated a questionnaire to all departments asking them to tell us the number of sharing agreements that they had, and the particulars of what they were sharing. I think it would be embarrassing to those departments if I were to drag that document out today because the return was, I knew on the face of it, “incomplete,” using is the most generous word that occurs to me. I subsequently discovered that the reason for that was that they did not have a very good catalogue themselves.

Just two days ago I returned from a meeting of my provincial counterparts in Winnipeg. The subject of information sharing was on the agenda. They are all most anxious to see what kind of information sharing is being done between federal and provincial governments, for what purpose, and the details. I would include in that, senator, foreign governments. Yes, indeed, a lot of Canadian citizens' information does, I am sure, become involved in those transactions, and we should know about that.

I would like to return to the point I made a few moments ago. This is not to imply that there is necessarily anything wrong with any of this information sharing. On the contrary, I am sure most of it is necessary, and for the public's benefit. Nevertheless, I am not at all certain that the end users feel that they are under the same obligation as the Government of Canada of safeguarding the information and not misusing it. It is a field ripe for careful study.

**Senator Hays:** The long title of Bill C-6 is rather more helpful than its short title. The "Personal Information Protection and Electronic Documents Act" has the provision of not coming into force for a period of time. That time delay was extended by the Senate with respect to medical records with the hope that a consensus will develop and that there will be amendments to the act that will make it better in that respect.

Could I have your comment on how you see that playing out? Do you think a consensus will develop? What will happen if a consensus does not develop?

**Mr. Phillips:** As I understand the way that Bill C-6 was ultimately passed, all that has happened with respect to health information is that it has been exempted from the application of the bill for an additional year, beyond January 1, 2001. Unless something happens between January 1, 2001 and January 1, 2002, health information will be covered by this bill, no matter what else happens.

I expect that the Senate committee examining this will come up with some suggestions during the course of 2000-2001. We must wait to see where it goes from there.

There is a school of thought that says that health information should be looked at differently from all other kinds of personal information because it is sensitive. That is true, it is sensitive, but sensitivity is very much in the eye of the person to whom the information relates. Therefore, it is very difficult to make any kind of a case on those grounds. There may be a case on the grounds of the complexity of the health information field because there are so many players in it, both in the public and private sectors.

My own preference would be for medical information to be covered by a general privacy bill. I see no compelling case for why it should not be covered by such a bill, at this stage in any event.

We will just have to wait for the findings of the committee. Does that answer your question?

**Senator Hays:** That is helpful. A specific subject subset of that would be information on one's genetic code. There is a great [ Mr. Phillips ]

potential to use that to determine future health prospects. There is a desire on the part of many to gather information in that area. The insurance industry, for the obvious reason of selecting lower risks or higher risks for different treatment, is quite interested.

Would you comment on how you see that playing out?

**Mr. Phillips:** I think the misuse of such information as DNA coding for possibly discriminatory decisions being made about the individuals concerned by such people as insurers and employers, you name it, has got to be dealt with in a statutory way. We certainly have to face that issue.

That issue is upon us now, because the human genome project is coming to completion much faster than expected. It will now be finished in a year, whereas the earlier projections were for several years to come. Unless there is a strict prohibition against the use of that information for determining a person's insurability or employment, and matters of that kind, it will happen. You can count on it.

• (1740)

A real problem of both law and ethics is now in front of our society. You have put your finger right on the issue.

**Senator Hays:** Do you feel good about what you expect will happen in Canada? Obviously, you have been advising the government on this issue and your expression of concern is heard here. Are you optimistic that we will have something to deal with this problem in the near future?

**Mr. Phillips:** I would be more optimistic if a Senate committee put out a strong report saying we had better do something about it.

**Senator Finestone:** Mr. Phillips, I am delighted that you are here. I am sorry to learn that you might be leaving. Your rational arguments and your sensitivity to human issues were the impetus for a standing committee on human rights and the disabled to come up with a report. That report has been the backbone of a large amount of work that has been done on privacy rights.

On the issue of privacy rights, where do you stop? You have given rational arguments and you have been sensitive to all the issues that are in the newspapers every day. They are on the Internet every day, with convergence and with technology. I believe we are all very concerned. I am glad that my colleague, Senator Hays, asked you the question about Bill C-6. The human genome and surveillance technology fall into that. Bill C-6 refers to implied consent. It does not refer to informed consent. Are you comfortable with that still?

**Mr. Phillips:** Bill C-6 contains a number of ambiguities, senator, and we could spend much time going over them. I have never been personally happy with negative consents, implied consents, comprehensive consents in perpetuity of the kind that you find on credit applications, and so on. However, I try not to be an absolutist and I try to see each case on its merits. I try to find a formula for consent and other privacy issues that will suit the case and make it possible to continue to do business.



Bill C-6 is a new concept for Canadian business. It will not always be easy for them to put themselves in a position of compliance if the compliance involves major changes in longstanding ways of doing business and collecting customer information. I do not believe it was the intention of this Parliament, and certainly not the intention of this office, to behave in an impatient or arbitrary fashion that will force businesses to shut down and put people out of work. We must approach this issue with a good deal of care and give business adequate room and time to get itself into line.

I will, with your understanding, decline to get involved in a discussion of some of the minutia of Bill C-6. Our legal counsel, for example, confesses similarly to the point that the bill itself, given the unusual nature of the statute, is essentially a set of recommendations developed by a voluntary body. Those recommendations were simply taken holus-bolus and thrown into a statute, and laws are not often written that way. As a consequence, although the drafters of the act did try to make things a little clearer, there are still problems that require time and care. That is the best answer I can give.

**Senator Finestone:** It was important to note, in light of the rapidity of the change, that we cannot expect culture shock all in one shot. That is one of the things I have appreciated about your approach, which leads me to page 83 of the document. Mr. Commissioner, I notice with a degree of humility that you have mentioned a privacy rights charter, which I am hoping to bring into this house if I can ever finish the legal drafting and the translation. It has been almost a year of work.

I think a great deal about privacy rights these days. The census question demands personal information, and you believe — and I understand why you believe this — that we have made a contract with even those who are dead. Therefore, one cannot dishonour the dead. I agree with that.

How can we can dishonour the living so easily when we see 300 protocols signed by Revenue Canada with God knows who, and one's information is travelling all over the place? It is apparently okay for the census, and we should not explain and we should not interfere, but with my personal information and your personal information, Revenue Canada can go wherever it wants with 300 protocols. Do you not find that a little strange? We should keep you on in your position so that you could investigate that?

**Mr. Phillips:** I will do what Parliament tells me, senator.

Yes, I think that is a good point. There is an enormous amount of information moving back and forth. There is an enormous amount of information that must move back and forth. The government needs that information in order to do its business. The whole thing turns on the way this is done. Is it done in a way that respects the principle of the Privacy Act? The only exceptions that are invoked to that act are in the cases of absolute, overwhelming public necessity. One can make no other argument for abrogating people's rights. Merely having a group of middle-level managers, for example, say that it will be a good

idea to do this is not, in my opinion, enough. We must buttress and fortify these information holdings with more clearly defined rules and a more rigorous process for overseeing what is done with that information. Minister Stewart's program that she brought forward the other day goes a long way to meeting those objectives. It could be a template, and I am anxious to see how it works out.

**Senator Finestone:** I hope that template is something you will want to put in the charter.

**Mr. Phillips:** I am glad you have drawn my attention to what I said about your charter in the report. In an effort to telescope my opening remarks, I overlooked mentioning that. That is a useful development because it cannot help but have the effect of increasing the profile of the issue and broadening public awareness.

I have been asked what is the main privacy problem in the country, and I would say it is ignorance. People simply do not know what is going on. They do not know their rights. If there are not a great many complaints, it is frequently because people do not know who to complain to or do not know what is happening and, as a consequence, cannot complain. Therefore, your charter has been a good piece of work and I was glad to have been a part of it.

**Senator Stratton:** Mr. Phillips, we shall miss you. I enjoy your presentations here each year. I am assuming you are gone, I am not certain of that fact.

I should like to talk about the Canadian Firearms Registry, if I may. A few years ago, sir, you made 40 recommendations pertaining to the Canadian Firearms Centre. Eight of those recommendations addressed potential privacy problems in forms that gun owners must fill out to obtain their licences. Have all these recommendations been addressed?

**Mr. Phillips:** I cannot answer that because we are doing an audit right now. Sufficient public interest and a sufficient number of complaints were received to warrant going over to the firearms centre and saying we would like to have a look at the management of their data in relationship to the Privacy Act before the thing gets up and running and too far down the road. If there are any problems there, we will try to fix them.

• (1750)

**Senator Stratton:** Are you in the process of doing that?

**Mr. Phillips:** Yes, and I will ask the staff to take note of your question and get you an answer as soon as possible.

**Senator Stratton:** I appreciate that.

There are 1,400 Canadians employed there now. How well do these people understand the privacy issues involved, or can you again not answer that question because of the audit process?

**Mr. Phillips:** That is right.

**Senator Stratton:** Finally, can gun owners access their personal file? If so, is this access governed by the Access to Information Act or the Privacy Act?

**Mr. Phillips:** If it is their personal information, it would be covered by the Privacy Act.

**Senator Stratton:** I believe I know the answer to this question, but can you guarantee that the information contained in those personal files will never be used or distributed elsewhere?

**Mr. Phillips:** I cannot give that guarantee. As I have said, Privacy Act rules do give government agencies a fair degree of latitude in using information for unrelated purposes. You need only look at the statute yourself.

Given the kinds of data involved, given the context in which the centre was created, given our ongoing interest in it and a number of other matters of that kind, I would expect staff to be particularly conscious of the sensitivity of the issue and to be very careful. However, that is only an expectation.

**Senator Taylor:** Mr. Phillips, it is my understanding that people can access information in the provincial tax base, and if there is any misunderstanding it can be cleared up. However, one cannot access the federal tax information. What should be done or what are you recommending?

**Mr. Phillips:** My view is that any information that comes into the possession of the Government of Canada of a personal nature comes under the purview of the Privacy Act, unless it is information obtained from a provincial government under guarantees of confidentiality to the originating source. That is what we are trying to sort out here. That is my view and not necessarily the view of everyone in the office.

**Senator Taylor:** My understanding is that the provincial government will let you look at your file to see if it is correct. If you ask the federal government, they will not let you look at your own file.

**Mr. Phillips:** That is the problem with this. Is the file itself a meld of both provincial and federal information? If it is, the government would have the responsibility of severing out the information it obtained on a confidential basis.

**Senator Taylor:** Is there any possibility, seeing so much of the interest in census records seems to be tied to health, of splitting the census form into — I do not know what it would be called — data that was releasable and data that should not be released?

That form is huge now. Why do you have to take the whole thing under secrecy? Why could you not allow the person filing to do one thing or the other, similar to donating one's organs? Instead, one would donate one's medical history.

**Mr. Phillips:** Senator, I have got this good privacy award here in my pocket and I have just found the person I would like to pin it on. In that question, you have just expressed the whole issue of

privacy in the informational context, which is getting the consent of the person whose information is involved.

If, in filling out a census form, I could mark a little check-off box for the information I was prepared to have made public and the information I was not, and my wishes would be respected that is the end of the issue.

In fact, with respect to the matter you just raised, there is a problem with the child disability issue. There is no consent involved in that transaction, quite apart from who has jurisdiction over the information. Section 7 of the Privacy Act states that information collected for one purpose will not be used for another purpose without the consent of the person concerned. Section 8 sets out a number of exemptions.

**Senator Fairbairn:** Welcome, Mr. Phillips. Our paths have crossed in interesting ways over the years.

I have been sitting here this afternoon with an increasingly sinking feeling. Since I came to this place 16 years ago, I have spent a great deal of my time working with and advocating for people with literacy problems and learning disabilities. As I listen to the questions and the answers, I am thinking of over 40 per cent of our adult citizens, maybe over 7 million adult Canadian citizens, who, right off the bat, are in an incredibly vulnerable position. These are people who, with respect to any of the forms that have been discussed, would have great difficulty in either reading them, understanding them or filling them out. As you say, one of the major difficulties is that they do not know their rights. This is a sizeable part of our population in what we think of as a prosperous and caring country.

In all of your work on the privacy issue, and some of the enormous opportunities and fear that surround that issue, have you ever had occasion to look at that group of Canadians and the position that they are in, almost from the beginning, of having to share their private information with someone else, even to get it on the record? It really is a Catch-22 situation, and I would like your thoughts.

**Mr. Phillips:** Senator, I will level with you. No, we have not done a special study or devoted any substantial part of our resources to that question.

Having said that, it is more because we do not have all the many resources. Handling the traffic that comes to us that we must deal with on a statutory basis just about chews up everything we have.

There is a privacy issue involved in people who are not literate, because they have no choice. You said it. They have to give up their information just so they can understand what information they have to give up, if you want to put it that way.

We should look at that issue. In the enlarged mandate of the office now, I hope we can find the personnel and the resources to take a good, hard look at it. It may not require a whole lot of hard research. I do not know. I can see someone here who can already tell us a lot about it. We will get in touch with you on that. It is something we will have to look at.



**Senator Fairbairn:** Maybe this would be a future project for you.

**Mr. Phillips:** That is what I am saying. I can see one good resource right here.

**Senator Kinsella:** Commissioner, have you appeared or have you been invited to appear before the Senate committee examining Bill C-22, the money laundering bill?

• (1800)

**Mr. Phillips:** Yes, we have, and we will be there, senator. Our intervention will be short. We do not have a whole lot to say about it, but there are a couple of important points we wish to make, yes.

**The Chairman:** Commissioner Phillips, I thank you very much for your availability to come to the Senate. As you can tell from all the questions that were asked, privacy is a very important issue for all senators and for all Canadians.

**Mr. Phillips:** Thank you, Madam Chair and honourable senators.

**Senator Hays:** I get the last word, Mr. Commissioner. I should like to add my thanks for your appearance today and also for your good service to Canada over the years that you have served

as Privacy Commissioner. If you do leave that position, given your activism, I am sure that we will see you here again in one role or another in the not too distant future.

In any event, honourable senators, I move that the committee rise, that the chair report, and that we conclude our deliberations.

**The Chairman:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Senators:** Agreed.

**The Chairman:** Carried.

[Translation]

#### REPORT OF COMMITTEE OF THE WHOLE

**Hon. Rose-Marie Losier-Cool:** Honourable senators, the Committee of the Whole, to which was referred the discussion about the work of the Office of the Privacy Commissioner, has directed me to report that the committee has concluded its deliberations.

The Senate adjourned until Wednesday, May 31, 2000, at 1:30 p.m.

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CANADA

# Debates of the Senate

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• 36th PARLIAMENT

• VOLUME 138

• NUMBER 60

OFFICIAL REPORT  
(HANSARD)

Wednesday, May 31, 2000

—  
THE HONOURABLE GILDAS L. MOLGAT  
SPEAKER

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## THE SENATE

Wednesday, May 31, 2000

The Senate met at 1:30 p.m., the Speaker in the Chair.

Prayers.

### THE LATE LIEUTENANT-COLONEL THOMAS G. BOWIE

#### TRIBUTE

**Hon. Raymond J. Perrault:** Honourable senators, Lieutenant-Colonel Thomas Bowie, a great Canadian who served this country and this institution, has passed away here in Ottawa at the age of 82. He was Gentleman Usher of the Black Rod between 1979 and 1984, when he retired.

Lieutenant-Colonel Bowie had a rich and full life. After serving with the Canadian army in Britain, North Africa and New Guinea during the Second World War, Colonel Bowie retired as a major in 1945. He was back in uniform in 1947, having joined the Governor General's Foot Guard, where he rose to the rank of Lieutenant-Colonel and commanded the regiment. He was also appointed honorary aide-de-camp to Vincent Massey after he became the first Canadian Governor General.

From 1964 to 1978, Lieutenant-Colonel Bowie served as a parliamentary relations officer, which effectively made him the executive assistant to the Speaker of the House of Commons at the time, Alan Macnaughton. He was the right arm of Mr. Macnaughton. He was an activist in his position and fully in support of reform. He was very popular with the people with whom he worked. One quote from the archives states:

You looked up in awe at him....but he didn't have the snootiness of some military men.

That is a high tribute from the ranks.

Lieutenant-Colonel Bowie leaves his wife, Madeleine O'Neill, his children, Louise, Peter, Geoff and George, and eight grandchildren. We mourn his loss.

### SENATOR'S STATEMENT

#### ONTARIO

#### GOVERNMENT CUTBACKS

**Hon. Jean-Robert Gauthier:** Honourable senators, it is a strange world, economically speaking, when a provincial government in Ontario with a debt of \$114 billion is able to distribute \$200 to each of its taxpayers, totalling a cost of almost \$1 billion.

Knowing that the health care system in this city is running an operational deficit in the hundreds of millions of dollars and that our school boards are already financially strapped, the provincial Tory Government of Ontario is about to distribute \$200 to its taxpayers. This public relations effort to boost its Tory image does not help, for example, the children deprived of their needed teachers and equipment, the sick people in our hospitals, the elderly, the homeless, the handicapped or the proper testing of drinking water. The Harris government has not even made the proper provisions in anticipation of the 40 per cent increase in university demands over the next decade in Ontario, partly due to the elimination of Grade 13.

• (1340)

It becomes an even stranger world to learn that the debt in Ontario has grown from \$80 billion to \$114 billion since Mike Harris became premier and that the Government of Ontario spends more every year to service the debt, \$9 billion, than it spends on community and social services.

The strategy used by the Tory government to increase its popularity will not fool Ontarians. It is obvious to us that this money should be used by Ontario to improve services. That is why I suggest that people endorse the \$200 cheque and make it payable to their preferred charity or public service, such as local school boards, health care centres, or needed public services throughout the province.

I shall send my \$200 to the Ottawa Rehabilitation Centre, where I have spent several years and where I know the government has reduced operational grants to a minimum.

## ROUTINE PROCEEDINGS

### CITIZENSHIP OF CANADA BILL

#### FIRST READING

**The Hon. the Speaker** informed the Senate that a message had been received from the House of Commons with Bill C-16, respecting Canadian citizenship.

Bill read first time.

**The Hon. the Speaker:** Honourable senators, when shall this bill be read the second time?

On motion of Senator Hays, bill placed on the Orders of the Day for second reading two days hence.



## QUESTION PERIOD

### HUMAN RESOURCES DEVELOPMENT

#### DATA BANK ON DETAILS OF PRIVATE CITIZENS— ALLEGED BREACH OF SECURITY

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, could the Leader of the Government in the Senate brief this house on the situation in Human Resources Development Canada with respect to reported intrusions into personal data files?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I can only repeat information that is already available with respect to the dismantling of the Longitudinal Labour Force File. I am not able to give specific information, but if the honourable senator wishes to elaborate on his inquiry, I will certainly attempt to get the information.

**Senator Kinsella:** Honourable senators, there are reports of breaches in the data bank. I have no more information than that. I will await the minister's inquiries and advice to the house. The matter seemed to be germane after our excellent Committee of the Whole yesterday with the Privacy Commissioner.

### CANADIAN BROADCASTING CORPORATION

#### EFFECT OF PROPOSED CUTS

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Honourable senators, I will turn now to a regional matter that affects many regions of Canada. I refer to the Canadian Broadcasting Corporation and the discomfort experienced across Canada with regard to the proposal to cut out supper-hour news programs in the regions.

My region, the province of New Brunswick, is, as the honourable minister knows, a bilingual jurisdiction. Therefore, we need to have Radio Canada and CBC delivering the regional news to two communities in one province.

Could the minister advise the house what the government policy is vis-à-vis the corporation's proposal and what his understanding is of the current position of the CBC on that issue?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, on the first issue raised by the honourable senator, I will certainly make inquiries of the minister about any alleged breaches of security of information held within that department. I am not aware of any, but I will make that inquiry and relay the information to the Senate.

I was very pleased yesterday, as were we all, I am sure, to hear the Privacy Commissioner characterize the action taken by the honourable minister. When asked whether he was satisfied, he very specifically said that not only was he satisfied, he was absolutely delighted.

**Some Hon. Senators:** Hear, hear!

**Senator Boudreau:** To paraphrase him, he said that if he were the person in charge, he could have done no more than the minister. I am sure that all honourable senators were reassured to hear that from the Privacy Commissioner.

With respect to the CBC, it is a good news development that the CBC has decided to retain regional newscasts in various areas across the country.

I am sure that most of us in this chamber have had discussions in the last few weeks with people from our own regions, including CBC employees, who were expressing great concern. I received a call from a very prominent CBC employee immediately after the announcement was made. I asked for his reaction to the new plan. He said that he was very relieved at the change. He was not 100 per cent satisfied, but he said, "They haven't torn up the tracks." I immediately understood what he meant.

As we all know, the CBC operates at arm's length from government. We cannot impose specific communications policies on the directors and management of the CBC, nor should we. However, the people of Canada spoke clearly, and their voices were heard by the directors of the CBC. I can only hope that they will build on the plan that they have laid out to make the production and delivery of regional programming in both languages an even more fundamental part of their future plans.

### NATIONAL DEFENCE

#### REPLACEMENT OF SEA KING HELICOPTERS— OPERATIONAL REQUIREMENTS OF NEW AIRCRAFT

**Hon. J. Michael Forrestall:** Honourable senators, can the Leader of the Government in the Senate confirm, on behalf of the government, that when a maritime helicopter program is initiated it will be a fair and open contract process in accordance with the already-developed requirements of this aircraft and not a watered-down version?

• (1350)

**Hon. J. Bernard Boudreau (Leader of the Government):** I can tell the honourable senator with great confidence that the process will be fair, open, and will result in the procurement of equipment — as soon as possible, — equipment that the finest military experts will assure us is adequate to the task.

**Senator Forrestall:** Honourable senators, why does the Leader of the Government in the Senate not answer the question? The question is simple. Has there been any change in the operational requirements for that aircraft? If there has been any change and there is a directed contract to Eurocopter, someone will look awfully silly. The people who will suffer are the men and women who must fly in those aircraft and who have been required to fly in them for the last five or six years.

Therefore, I ask the minister to be specific, yes or no? Have there been any changes? Of course the contract can be watered down as to the requirements, and we can still have an open and fair competition. However, we will not be getting the piece of equipment we want. That is what I am concerned about, which is also what the people who fly these machines are concerned about, that they will get a lesser piece of equipment and that will not be able to do the job safely.

**Senator Lynch-Staunton:** Hear, hear!

**Senator Boudreau:** Honourable senators, I can only assure the honourable senator that the procurement of that piece of equipment will be done with the advice of experts and top military officials who know far better than I, for example, exactly what are the requirements. Whether or not those requirements have changed in the last six months or three years, I am not in a position to say. I can say with confidence, however, that the procurement of new military equipment will not be done without the expert advice and guidance of our military, who will be in charge of putting this equipment to work.

**Senator Forrestall:** Can the Leader of the Government in the Senate give us the assurance that the government, the Minister of National Defence or someone else from the government will not tell the generals that, as far as we are concerned, this is a good enough level, that we do not need to go to the level of the EH-101 or the modifications that were embraced in the Cormorant?

Honourable senators, I ask these questions because today I have received some information, and I have learned to respect the information that comes to me. I think senators in this chamber will recognize that.

REPLACEMENT OF SEA KING HELICOPTERS—  
RELEASE OF SUBMISSIONS OF INTEREST

**Hon. J. Michael Forrestall:** Is it true or not true, or does the minister not know — I am sure he cares, but perhaps he does not know — that the government will ask for submissions of interest from industry within two weeks?

**Hon. J. Bernard Boudreau (Leader of the Government):** I can assure the honourable senator that I have no knowledge of that at the present time.

## TRANSPORT

AIR CANADA—COMMITMENTS TO SMALL CENTRES—  
GOVERNMENT POLICY

**Hon. Leonard J. Gustafson:** Honourable senators, I have a question for the Leader of the Government in the Senate. Air Canada's competition was removed, as far as I can see, and it seems as though centres like Regina are not getting a fair deal from Air Canada. Is the cabinet monitoring this situation? For instance, the biggest plane that will service our area will be

[ Senator Forrestall ]

a 737. We were being served by Airbuses. It is getting difficult to fly into these small centres.

Is the cabinet looking at whether Air Canada is living up to its obligations and the commitments it made to all of Canada? I am sure that if this is happening in Regina, it is probably happening in Saskatoon and other centres. It certainly is happening in the area to which I travel by air.

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I can assure the honourable senator that the government, through the Department of Transport and the minister, monitors these situations very carefully to ensure that Air Canada lives up to its commitments. Of course, we will have an opportunity to study the legislation in some detail, particularly when it goes to committee. I think all honourable senators will be interested in what protections are contained in that legislation, how they might function, who might monitor them and so on. Currently, the minister and his department are carefully monitoring that situation, but we will have an opportunity soon to examine all these areas in much more detail in committee.

**Senator Gustafson:** It would seem, honourable senators, that it is becoming difficult — and I hear this from people who travel to the Maritimes and to the Prairies — to even get to these smaller centres. Quite frankly, a number of us were left in Winnipeg.

**Senator Stratton:** On a regular basis.

**Senator Gustafson:** Yes, and we must stay overnight in Winnipeg and fly on to Regina the next day.

Honourable senators, I just want to reinforce my question. Is the cabinet looking at specific small centres and asking whether good service is being committed to those areas?

**Senator Forrestall:** The short answer is no.

**Senator Boudreau:** I would indicate to Senator Gustafson that in travelling to Winnipeg, as he explained, he was definitely heading in the right direction in this country.

The honourable senator's concern is real. We had two airlines that competed and that situation could not continue. Now we are left with a new set of circumstances.

I am informed by the deputy leader that the bill is now before the committee and the committee will, over the next few weeks, have an opportunity to examine these issues. One of the issues will be that reasonable service to small communities is made available.

AIR CANADA—PROGRESS OF LEGISLATION  
SETTING OUT OBLIGATIONS

**Hon. J. Michael Forrestall:** I have a supplementary question, honourable senators. How quickly does the government leader expect to have that bill back before this chamber? It will be in committee for quite a while, I would think.



**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, I have learned, from my experience both in this chamber and in other chambers, never to attempt to estimate when legislators may determine to deal with a particular piece of legislation. I hope it will come back to the chamber within a reasonable period of time, but I know honourable senators will want to give serious attention to this important issue.

**Senator Forrestall:** I do not think the house should adjourn until June 23, so that is a good date.

## FOREIGN AFFAIRS

### WAR BETWEEN ETHIOPIA AND ERITREA—POSSIBILITY OF A MORE CONCERTED INTERVENTION

**Hon. Douglas Roche:** Honourable senators, recognizing that few wars can lay any claim to rationality, the war between Ethiopia and Eritrea is particularly stupid and has caused an unbearable amount of suffering in the refugee camps, as Stephen Lewis reported yesterday.

Canada has indeed sent food aid to this region, known as the Horn of Africa, but is there a way for Canada to express more than its outrage and compassion at this meaningless destruction of life and property other than with food aid? Can Canada use its position on the Security Council to find a workable plan that will stop the fighting and ensure an opportunity for the beleaguered people of Ethiopia and Eritrea to live in peace?

**Hon. J. Bernard Boudreau (Leader of the Government):** Honourable senators, that is a commendable suggestion to the minister and the government. I believe we can use our position to attempt to influence that result. In the meantime, I believe we have an obligation to offer what humanitarian aid is practically feasible.

On the overall issue of this insane war, as the honourable senators quite clearly characterizes it, I can give the assurance that the minister would have no difficulty using our position and, indeed, whatever influence we have to bring a resolution to that conflict.

**Senator Roche:** Honourable senators, I thank the government leader for that answer, but can he give us an assurance that the view I have just expressed will indeed be carried forward to the minister on a priority basis?

**Senator Boudreau:** Honourable senators, I will give that undertaking, without hesitation, to the honourable senator. I might add my own comments to his, as I pass them to the minister without delay.

• (1400)

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to draw your attention to some distinguished visitors in the

Speaker's gallery, the delegation from the Russian upper house, the Federation Council. The members of the Federation Council are also members of their individual provincial or state governments and these distinguished visitors are chairmen of the state governments in their respective provinces.

On behalf of all honourable senators, I wish you welcome here to the Senate of Canada and may you have a pleasant stay in our country.

**Hon. Senators:** Hear, hear!

## ORDERS OF THE DAY

### HERITAGE LIGHTHOUSES PROTECTION BILL

#### SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Forrestall, seconded by the Honourable Senator DeWare, for the second reading of Bill S-21, to protect heritage lighthouses.—(*Honourable Senator Callbeck*).

**Hon. Catherine S. Callbeck:** Honourable senators, I should like to congratulate my colleague Senator Forrestall for his excellent remarks in bringing forward this piece of legislation. I do not intend to speak for a lengthy period, nor do I wish to repeat the points already made by Senator Forrestall. I only wish to indicate that I support this bill in principle and to raise a number of questions that I hope can be addressed by the committee during its study.

The purpose of Bill S-21, and I am quoting from clause 3, is:

...to facilitate the designation and preservation of heritage lighthouses as part of Canada's culture and history and to protect them from being altered or disposed of without public consultation.

Moreover, the designation of lighthouses will be made in the recommendation of the Historic Sites and Monuments Board. This purpose addresses the fact that lighthouses are important aspects of Canada's history, especially in the history of our maritime communities both on the east and west coasts of this country. I am in strong agreement with this point. Furthermore, I also believe that some of these buildings need to be protected for their cultural and historic value. However, I am not sure we need to pass Bill S-21 in its current form in order to achieve this. The reason for this is the existence of the Federal Heritage Buildings Review Office, or FHBRO. This office is currently mandated by Treasury Board to evaluate all federally-owned buildings 40 years or older as to their heritage designation before any alterations can be made. Alterations include dismantling, demolishing and disposal.

FHBRO conducts these examinations using a set of established criteria. Once the evaluation is complete, points are awarded for ease of classification. Buildings scoring between 50 and 74 points become recognized federal heritage buildings and those scoring 75 points or more are classified federal heritage buildings.

This distinction is solely administrative and has to do with the degree of consultation required with FHBRO for proposed interventions. With a classified building, a department must seek approval for changes, whereas with a recognized building, a department only needs to seek advice.

Also attached to this policy are in-depth guidelines for disposal of designated heritage buildings. The disposal of heritage buildings is not encouraged without first exploring alternatives such as new uses and leasing or transfer agreements that would offer the least negative impact on heritage character. Where necessary, disposal should be accompanied by legal instruments designed to ensure the ongoing protection of heritage character under new ownership.

Throughout the disposal process, the custodian department consults with FHBRO for advice on developing options, specifying the level and nature of protection required and integrating heritage protection in the determination of the market value.

As you can see, honourable senators, we already have a very comprehensive heritage designation policy for federal buildings. Given that the Federal Heritage Building Review Office currently manages it, I wonder if it is wise to remove one category of federal buildings, namely lighthouses, from this process. This would mean that lighthouses would be under a different review process than all other federally-owned buildings. I am not sure if this is necessary, and if it is, what about the other federally-owned buildings? I do not think any one of us wishes to see separate protection acts for all the different types of federal buildings. In addition, FHBRO has already examined over 200 lighthouses, out of which 120 have been designated heritage buildings.

The final issue that I wish to address has to do with the Real Properties Act and federal policy guidelines for the disposal of surplus property. As has been relayed to me, one of the main problems currently being faced when selling or transferring lighthouses over to community organizations is a provision in those guidelines requiring that all surplus property in Canada be sold at market value. Unfortunately, the ability of community groups to purchase lighthouses for anything more than a nominal fee can be difficult. As such, their proposals are often overlooked and lighthouses are often sold for private development. Bill S-21 does not seem to overcome this obstacle.

In my brief remarks today, honourable senators, I have questioned whether new legislation is needed to aid in the designation of heritage lighthouses in Canada, as there is a current process in place under the Federal Heritage Building

[ Senator Callbeck ]

Review Office. Whether this is sufficient is something that I think the committee should examine in detail.

I wish to reiterate my support for the bill in principle, particularly the provision that calls for public consultation and public hearings prior to the removal, sale, alteration or demolishing of a lighthouse. I look forward to further debate on this issue once it has been referred to the appropriate standing Senate committee.

On motion of Senator Hays, debate adjourned.

## STATISTICS ACT NATIONAL ARCHIVES OF CANADA ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Milne, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-15, to amend the Statistics Act and the National Archives of Canada Act (census records).—(*Honourable Senator Johnson*).

**Hon. Janis Johnson:** Honourable senators, I commend my colleague Senator Milne for her work on Bill S-15. I have looked at this issue carefully and am very much in favour of making the 1911 census available to historical and genealogical researchers. I also strongly support its release and am very concerned about any notion of destroying this data or locking it away on a permanent basis.

There are many excellent reasons for releasing the 1911 census once the standard 92-year limitation has expired.

• (1410)

First, virtually all civilized nations retain census data and make it available to historical researchers once a reasonable time has elapsed, including even such privacy-focused and litigious countries as the United States, which released its 1910 census for research years ago. European nations, such as Iceland, have only released their census records for 1910. Indeed, Iceland has published them for the general record. I mention Iceland because it is a very genealogically oriented society.

Second, because of the immeasurable historical value of such data, no civilized country would have such records destroyed or censored.

Third, genealogically speaking, these records are of vital importance for people tracing their ancestry.

Fourth, current generations of Canadians have a right to know their genealogical past, not only for reasons pertaining to family history but also for medical reasons. No Canadian should be deprived of this vital personal data that is inherently his or hers.



Fifth, because any sensitivity of such data fades quickly with the passage of time and changing circumstances and with the change of generations, concerns about the privacy of the individuals who provided census data become unfounded after a reasonable time has lapsed.

Whereas assurances given by the Canadian government with regard to privacy or other matters should be inviolable and sacrosanct, I do not feel the spirit of any assurances given in the 1906 or the 1911 legislation would be violated by opening the 1911 census. A careful reading of this legislation reveals that the intent of the framers was to allay contemporaneous concerns expressed by citizens of the day primarily with regard to financial information being leaked to "nosy" neighbours or tax assessors. The intention of those responsible was obviously to allay such fears and ensure privacy in that time and context. Failure to provide guidelines for future release has simply been the result of limited focus and oversight on the part of the framers.

This is evident in the wording of the census guidelines. I refer honourable senators to such phrases as "written consent," obviously not an option 100 years later, being required for the release, and such clauses as, "An enumerator is not permitted to show his schedules to any other person..." or, "...if a fear is entertained by any person that they may be used for taxation..." et cetera. Virtually all data which might have been sensitive at the time, such as income, property, religion, race, has long since become a simple matter of record which is of use only in a historical, sociological or genealogical context and poses no threat or infringement on the living or the dead.

In short, to withhold the 1911 census, on the grounds of narrow and pedantic interpretations of old legislation without due and appropriate consideration for the time context and the lack of specificity evident, would simply deprive present and future generations of Canadians of a valuable historical resource to which the citizens of virtually every other modern nation have access.

A close friend of mine, Mr. Nelson Gerrard of Agborg, Manitoba, has worked for 25 years on historical and genealogical research. He has used extensively census records in Canada, Britain, the United States and Iceland and sees no possible reason why the release of data such as that contained in the 1911 census would raise any concern from anyone anywhere at this time. He tells me that the data is useful in a variety of ways. It is not particularly personal in the context of history and can have no significant adverse affect on anyone.

Honourable senators, in the context of his current work in compiling a history of the Icelandic pioneer community in Manitoba's Interlake Region, the withholding of the 1911 census is a significant impediment which is not easily overcome. Almost all of those alive at that time are now deceased, even the youngest children, and in the absence of records such as a census, there is no one to speak for those generations and no

documentation to show that they ever existed or played a part in the founding of this nation.

From the perspective of a Canadian citizen who is well acquainted with the issues of privacy as well as the disciplines of history and genealogy, I strongly urge the Canadian government and the Senate to consider this matter in a comprehensive, common-sense context, recognizing the semantic inadequacy of that legislation which has hitherto proven an obstacle to the release of data to which every Canadian should obviously have the right of access.

On motion of Senator DeWare, debate adjourned.

## VISITORS IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to draw your attention to some distinguished visitors in the gallery. In the Speaker's gallery on the left is a delegation of Italian parliamentarians who have been invited to Canada by our colleagues from the Canada-Italy Friendship Group. They are here today, accompanied by His Excellency Ambassador Roberto Nigido, and are the guests of our colleague Senator Ferretti Barth.

On behalf of all honourable senators, I bid you welcome to the Senate of Canada.

Honourable senators, I would also like to draw your attention to two other visitors in our gallery, Mr. Alan Lowe, the mayor of Victoria, and his wife, Grace Lowe. They are here at the invitation of Honourable Senator Poy.

Welcome to the Senate of Canada.

## DIVORCE ACT

BILL TO AMEND—SECOND READING—DEBATE CONTINUED

On the Order:

Resuming debate on the motion of the Honourable Senator Cools, seconded by the Honourable Senator Chalifoux, for the second reading of Bill S-12, to amend the Divorce Act (child of the marriage).—(*Honourable Senator Sparrow*).

**Hon. Sharon Carstairs:** Honourable senators, this item is presently standing in the name of Senator Sparrow, and I wish to so leave it. However, if there is agreement of the Senate, I should like to speak to the bill now.

**The Hon. the Speaker:** Is it agreed?

**Hon. Senators:** Agreed.

**Senator Carstairs:** Honourable senators, I rise today to speak to Bill S-12. I want to begin by thanking the special committee that examined custody issues and provided to the Senate and the House of Commons a report entitled "For the Sake of the Children." This committee was ably co-chaired by Senator Pearson, and gave excellent recommendations to ensure that children are the individuals in principal need of protection during divorce and resulting custody decisions. I encourage the Minister of Justice to amend the Divorce Act with dispatch and to take these excellent recommendations into consideration and, ultimately, to make them into law.

Bill S-12, however, reflects views with which I do not concur, primarily because it does not, in my view, protect children. The purpose of Bill S-12, as I read it, is to remove the liability of the non-custodial parent to a child over the age of 18, unless that child suffers from physical and/or mental disability.

Honourable senators, I must ask a question: Do parents, custodial or non-custodial, have responsibility to able children over the age of 18? I believe the answer to the question is yes, and this "yes" should have no relevance to the question of who is the custodial parent. Let me now explain why I believe these responsibilities exist, particularly in the provision of education.

Within each family unit there exists a number of factors making up this relationship. Love, affection and the sharing of resources are just some of these factors. However, one factor that is frequently not considered is a factor which I consider to be extremely important. I refer to the factor which I will call "expectation."

Honourable senators, I am the proud mother of two daughters. Their father, who also happens to be my husband, is an equally proud parent. Our daughters are now 31 and 27, and the patterns of expectation begun in their childhood still exist.

• (1420)

Let me give you some examples of these relationships. Infants' expectations are almost entirely on the side of parents. However, even at the age of two, our daughters understood that expectations were a two-way relationship. They had the expectation that each night before they went to bed, either John or I would read them a bedtime story. We, in turn, had the expectation that they would put their toys away. Honourable senators, any of you who are parents and grandparents know that having a two-year old put toys away is no easy challenge — in fact, it is much easier for parents to do it themselves. However, if you are trying to develop relationships and a sense of responsibility on the part of your child, you try to get them to at least begin the process of putting a few of those toys away. That sense of fostered expectations was the basis of our family life, and so they grew.

As they entered school, the most important set of expectations for our family emerged. Both John and I place a high value on education. It was our expectation, firmly entrenched in our children, that their job — just like mom and dad had jobs — was to go to school and to do the very best they could. In turn, they could expect all manner of books and school supplies, trips to the library when research was required, and their parents' attendance at all school events, competitions, festivals and the expectation that, above all else, there would be pride in their accomplishments. The expectation was that their parents would help them achieve the highest level of academic achievement that they desired.

Now, honourable senators, I say that with a bit of chagrin because my eldest daughter is still in school at the age of 31. Yes, we are still helping her achieve her academic goals; and, yes, we are both bursting with pride that she has just been given a post doctoral scholarship in Sweden and will complete her Ph.D. this fall.

Honourable senators, I wish to ask you this serious question: Should these expectations be simply pushed aside and should their expectations have been destroyed if John and I, for whatever reason, had chosen to divorce? Should our children's expectations have been dashed because their parents decided that they no longer wished to be together?

At the average age of 18, most children in Canada are barely finishing high school. They have, for the most part, just begun post-secondary studies at colleges, universities and technical schools. Should the custodial parent be the only one responsible for helping them out at this stage, particularly in circumstances when expectations have been instilled in their children by both parents since childhood? I believe not.

Not all parents will be able to fund their children's education. Many will only be able to offer free room and board. Why should this burden, accepted and welcomed though it may be, only fall to the custodial parent? After all, honourable senators, few judges continue custodial orders after the age of 18 if the child makes it clear that she or he wishes to live with the other parent. The custodial order is then changed.

Honourable senators, I would suggest that a child has two parents, and two parents have equal responsibility — as equal the day before a child's eighteenth birthday as the day after their eighteenth birthday. This provision in the Divorce Act is almost exclusively applied to the educational needs of children over the age of 18 and I, for one, believe it should be maintained.

**Some Hon. Senators:** Hear, hear!

On motion of Senator Hays, for Senator Sparrow, debate adjourned.



## VISITOR IN THE GALLERY

**The Hon. the Speaker:** Honourable senators, I should like to draw your attention to a distinguished visitor in the Governor General's gallery or the central gallery, namely, Her Highness Sheikha Mozah Bint Nasser Al Misnad of the State of Qatar.

Your Highness, on behalf of all honourable senators, I bid you welcome here to the Senate of Canada and wish you a pleasant stay in our country.

**Hon. Senators:** Hear, hear!

## LIBRARY OF PARLIAMENT

### SECOND REPORT OF JOINT COMMITTEE ADOPTED

The Senate proceeded to consideration of the second report of the Standing Joint Committee on the Library of Parliament (mandate of the Committee), presented in the Senate on May 30, 2000.—(*Honourable Senator Robichaud, P.C. (L'Acadie-Acadia)*).

**Hon. Louis J. Robichaud:** Honourable senators, I move the adoption of the report.

Motion agreed to and report adopted.

## INTERNAL ECONOMY, BUDGETS AND ADMINISTRATION

### NINTH REPORT OF COMMITTEE ADOPTED

The Senate proceeded to consideration of the ninth report of the Standing Committee on Internal Economy, Budgets and Administration (Employment Equity and Diversity Policy), presented in the Senate on May 30, 2000.—(*Honourable Senator Rompkey, P.C.*).

**Hon. Bill Rompkey:** Honourable senators, I move adoption of this report. The ninth report deals with the employment equity and diversity policy recently adopted by the Standing Committee on Internal Economy, Budgets and Administration.

Employment equity means that all job applicants and employees have a fair chance in the workplace. It is achieved when no person is denied employment opportunities or benefits for reasons other than competence. This means that the Senate will regularly review its employee hiring and promotion policies to ensure that those policies provide equality of employment for any employee in hiring, promoting, training, and working conditions.

To achieve fairness, we will ensure that the criteria used for hiring and promoting employees are equitable and barrier-free. Regardless of gender, race, disability or ethnic origin, individuals must be given the opportunity to make the best use of their talents and skills. For the four current designated groups that

have historically been underrepresented, namely, women, aboriginal peoples, persons with disabilities and members of visible minority groups, selection of candidates continue to be based on merit. The Senate is aiming for equitable treatment so that everyone is given the same chance.

Honourable senators, there will be no hiring quotas. The intent of the employment equity program is to remove discriminatory barriers faced by designated groups so that everyone has both an equal and a fair chance at jobs. Hiring will continue strictly on the basis of ability and skills, just as at present. However, we will be setting objectives. "Objectives," as distinct from "quotas," are a means of measuring progress.

In the self-identification questionnaire, which will be sent out shortly by the Clerk and the Human Resources Directorate of the Senate, employees will be asked to reply to specific questions. It is up to them to determine whether or not the description fits. Obviously, the more accurate the information, the better we will be able to assess whether the Senate is achieving fairness in the workplace. Everyone is encouraged to complete the questionnaire as accurately as they can.

The Senate is committed to the goal of a fair and equitable workplace without barriers to the hiring or advancement of any staff members. In order to measure progress in achieving that goal, there is a need to have accurate and complete information about the workforce. The survey will help in two ways. First, it will give us a snapshot of the current workforce and an indication of what progress has been made towards achieving a workforce that is representative of the Canadian population. From that data, the effectiveness of staffing and promotional systems can be evaluated, and changes can be made that will lead to further progress in meeting the Senate's objectives.

• (1430)

Second, the survey results will be compared to external labour force data identifying the number of qualified persons in each of the designated groups. In addition, the information allows us to better respond to the specific needs of different groups of people.

I want to add that the committee appreciates the initiative, the work, the interest and the support of, first, Senator Oliver, who was instrumental in bringing this to our attention and, as well, Senators Robertson and Carstairs, who came before the committee in support of this initiative. I want to pay tribute to them and to thank them for their interest and help.

Honourable senators, I commend the adoption of this report.

**Hon. Brenda M. Robertson:** Honourable senators, the ninth report of the Standing Committee on Internal Economy, Budgets and Administration is a good report. I am sure all honourable senators will join with me in expressing our appreciation to the staff of the Senate's Human Resources Branch for their hard work in developing a policy on employment equity and diversity. It has been a long time in the making; however, their perseverance, and the perseverance of honourable senators in this chamber, has paid off.

It was in December, honourable senators, in connection with the International Day of Disabled Persons, that I said all Canadians desire to participate in a society in which equality for all is a tangible reality. Today, the Senate has taken another step in that direction.

The objective of the employment equity and diversity policy, as my colleague has said, is to achieve equality in the workplace for women, aboriginal peoples, persons with disabilities and members of visible minorities so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability. This means that circumstances and situations that may be unintentional but that, nevertheless, prevent Canadians from employment opportunities in the Senate will receive our attention and, most important, our action.

This initiative, along with the Action Plan on Accessibility for Persons with Disabilities adopted in March, is good and tangible progress to achieving equality. It brings credit to the Senate of Canada.

I wish to congratulate and thank all honourable senators and officials for the work they have done in developing this policy. It is very important work that they have undertaken. I am sure we all look forward to the day when we are in a position to celebrate the tangible results of our new employment equity and diversity policy, and we must work toward that end with unfailing commitment.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

Motion agreed to and report adopted.

## CANADA-JAPAN INTER-PARLIAMENTARY GROUP

TENTH ANNUAL BILATERAL MEETING WITH JAPAN-CANADA  
PARLIAMENTARIANS FRIENDSHIP LEAGUE—INQUIRY

**Hon. Dan Hays (Deputy Leader of the Government)** rose pursuant to notice of March 23, 2000:

That he will call the attention of the Senate to the tenth annual bilateral meeting of the Canada-Japan Inter-parliamentary Group and the Japan-Canada Parliamentarians Friendship League, held in Tokyo, Hiroshima and Shikoku, Japan, from November 6 to 13, 1999.

He said: Honourable senators, I see that I have left this item on the Order Paper for 11 sittings. Now that we have some time, perhaps I could take a few minutes of the chamber's time to reflect on it.

The tenth bilateral meeting of the Canada-Japan Inter-Parliamentary Group and the Japan-Canada Parliamentarians Friendship League took place on November 6 to 13, 1999, in Tokyo. There was a visit to Shikoku

[ Senator Robertson ]

Island and the four prefectures of that island. There were meetings with governors of three of the prefectures of Shikoku Island.

The meeting followed the Team Canada visit of the Prime Minister to Japan in September 1999. It is my view that this was a most successful Canada-Japan bilateral initiative. It saw 270 business leaders from across Canada in Japan. It saw the endorsement of the global partnership for the 21st century signed by the Prime Ministers of Canada and Japan and resulted in meetings between Canadian participants and Japanese counterparts that totalled approximately 4,000 in number when added together. As usual, a number of contracts were signed at the time of the Team Canada visit. The dollar amount represented by contracts signed was \$450 million.

The trip highlighted certain areas, including high technology, our trade in value-added agricultural products and, most important in my view, our potential to supply the needs of the Japanese energy sector. As I recall, the country is broken into 10 areas that are served by power monopolies in various stages of deregulating their markets. This means demands for technology and for more efficient transmission and generation of electricity. We had some very good meetings that followed up on our bilateral meetings with the Japanese in terms of the potential for Canada and Japan to trade in this area, both in services and in products required to increase the level of efficiency of the Japanese power systems.

Honourable senators, another topic I should like to mention under this item, which, strictly speaking, is not covered by my notice of inquiry but by a notice of inquiry given by Senator Carstairs, is an associated meeting which is the responsibility of the Canada-Japan group. I refer to the Asia-Pacific Parliamentary Forum meetings that were held in Australia between January 9 and 14 of this year. I believe Senator Carstairs covered the important work of that multilateral parliamentary meeting very well.

I mention only that the chair of that group, former prime minister Yasuhiro Nakasone, presided. As usual, we were the beneficiaries of his influence with world leaders in terms of holding a very successful meeting.

• (1440)

Since our bilateral meeting, there have been some changes in the Japan-Canada Friendship League. During my time as chair of the Canada-Japan Parliamentary Association, my counterpart was Dr. Tatsuo Ozawa. He will at some future time be replaced by Chairman Elect Tamisuke Watanuki, presumably after the next election in Japan. That date has not been formally set, but I understand the Prime Minister has identified June 25 as the almost-certain date of the next general election.

Honourable senators, in closing, I thank Senator Callbeck for her kind words yesterday about my recognition by the Emperor of Japan.



**Hon. Jeremiah S. Grafstein:** I wonder if the honourable senator would allow a question or two about Canada's relations with Japan?

**Senator Hays:** Certainly.

**Senator Grafstein:** Recently we read in the newspapers that the organization that represents the larger business interests in the country have taken the lead with respect to suggesting a free trade agreement with Japan. Does the senator agree with that? How might we facilitate such an initiative by government, as opposed to the private sector?

**Senator Hays:** I thank the honourable senator for the question. Talks are underway, supported by the Business Council on National Issues. The honourable senator was referring to the remarks of its president, Mr. Thomas D'Aquino. Free trade is a sort of catch-all, as we know from the negotiations which led to our Canada-U.S. free trade agreement. It did not literally mean free trade. It meant more liberalized trade between the two countries, a much more level playing field and a rules-based system for dispute settlement. Target-setting has begun for reducing barriers to trade, be they sanitary, phytosanitary or tariff barriers.

The discussions with Japan, I am very encouraged to hear, are proceeding but, in the context of what I have just said, free trade does not necessarily mean literally free trade. The Japanese are sensitive about a number of areas, agriculture being one. There are also a number of areas where we would benefit from a trading relationship enhanced by bilateral agreement, which we could call a free trade agreement. I support it.

The government, led by the Minister of Foreign Affairs and International Trade and the Minister of International Trade, is engaged. The Team Canada mission led in September of 1999 by the Prime Minister was a facilitator of those discussions. I am encouraged by the fact that the talks are taking place but they are at a very early stage.

**Senator Grafstein:** I commend Senator Hays for the award he has received from the Japanese government. It is a great tribute to him and his efforts. I should hope he would take to government the interest in pursuing a free trade agreement, led by the government, as opposed to the private sector.

There is a huge interest in breaking through the invisible tariff barriers that exist in Japan, particularly with respect to our value-added goods and, specifically, as the senator knows, the concern shared by our American colleagues with respect to high tariffs in agriculture, which might be a way of relieving the burden borne by competitive farmers in this country. The level playing field is not level when it comes to either Europe or Japan.

**Senator Hays:** Honourable senators, in terms of the negotiation being government-led or business-led, the

stakeholders on both sides of a bilateral issue must cooperate if something is to come together. I neglected to mention that, in addition to government and business, we have another extraordinary private-sector group involved, the successor group to one established by the previous government under the co-chairmanship of Peter Lougheed. The present Canadian co-chair is the Honourable Ed Lumley. That group is engaged in broad discussions on the trade file.

Our parliamentary group also provides input as we pursue the best possible relationships, trade and otherwise, between our two countries, Canada and Japan.

**Hon. Nicholas W. Taylor:** Honourable senators, I, too, congratulate Senator Hays for the significant honour he has received from the Japanese.

Perhaps we from the West do not receive the insight that we should. Can the honourable senator comment on Japan's outlook on the "two China" policy? They are right in the midst of Taiwan and China. What is their general attitude?

I realize I am asking for an opinion, but I know of no one else who would know more about it than the honourable senator. I would be interested in hearing his opinion.

**Senator Hays:** Honourable senators, that is a large topic. Japan has a close relationship with Taiwan which goes back a long way. It also has a very important and increasingly close relationship with China and has a "one China" policy, as we have.

The issue is an interesting and important one in that theatre because of the evolving role of Japan in security generally. As I am sure the honourable senator knows, the ninth article of the Japanese Constitution prevents it from having other than a self-defence force. Japan is a large spender on military hardware and has a large self-defence force. One of the great debates in Japan revolves around their future role. The Chinese and Koreans and others are interested as well. Taiwan is also, to some degree, involved in that question.

Canada is interested in helping Japan through common efforts in peace and security initiatives, particularly peacekeeping operations, or PKO. We want to play an increasing facilitator role as Japan looks at changing responsibilities for security. I appreciate the honourable senator raising the issue.

**Senator Taylor:** The honourable senator mentioned PKO and the significant size of Japan's self-defence force. Does the honourable senator have any opinion on whether Japan intends to take a stronger participation in UN peacekeeping operations around the world? PKO resources are already spread too thin, especially in Africa. Yet the Japanese, who seem to have the money, the training and the capacity, are not participating. Is their ninth article used as a dodge or is there another reason for that?

**Senator Hays:** Honourable senators, Japan is engaged in peacekeeping. Japanese and Canadian soldiers have served together on the Golan Heights and, I believe, in Cambodia. We also have common initiatives that arise out of the convention banning anti-personnel mines and de-mining areas.

• (1450)

Japan is the largest official development-aid-spender in the world. The combination of these things and the common objectives and values shared by the Japanese and Canadian governments provide many opportunities for us to do things together, as we do. However, we have the potential to do a lot more.

A couple of years ago, I attended the first meeting on security issues, which was held in Vancouver. A second meeting is, I believe, scheduled for later this year. That forum and others will provide opportunities for us to further our common interests.

At the time of the Team Canada mission, we had a symposium in the Canadian embassy, of which I was co-chair, that involved discussions on how we might more effectively pursue our common objectives for peace and security in the world.

**The Hon. the Speaker *pro tempore*:** If no other honourable senator wishes to speak, honourable senators, debate on this inquiry is concluded.

## ENERGY, THE ENVIRONMENT AND NATURAL RESOURCES

### MOTION TO AUTHORIZE COMMITTEE TO MEET DURING SITTINGS OF THE SENATE—DEBATE ADJOURNED

**Hon. Nicholas W. Taylor,** for Senator Spivak, pursuant to notice of May 30, 2000, moved:

That the Standing Senate Committee on Energy, the Environment, and Natural Resources have power to sit at 5:30 p.m. on Tuesday, June 6 and June 13, 2000, for the purpose of hearing witnesses on its study of Bill S-20, An Act to enable and assist the Canadian tobacco industry in attaining its objective of preventing the use of tobacco products by young persons in Canada, even though the Senate may then be sitting, and that rule 95(4) be suspended in relation thereto.

**The Hon. the Speaker *pro tempore*:** Is it your pleasure, honourable senators, to adopt the motion?

**Hon. Noël A. Kinsella (Deputy Leader of the Opposition):** Explain.

**Senator Taylor:** Honourable senators, this motion originally requested power to sit at 4:30 p.m., but Senator Kinsella thought that might interfere with the regular business of the Senate.

Therefore, we changed the motion to read "5:30," as the Senate chamber is normally not active at that time on Tuesdays.

The subject matter of Bill S-20 is not within our normal area of expertise, and we have found that witnesses from this industry are not that easy to schedule. We felt that at 5:30 there would be little chance of interfering with the normal business of the Senate.

**Senator Kinsella:** Honourable senators, we generally allow committees to sit while the Senate is in session when they are dealing with government bills that typically require, at the beginning of the hearings, the presence of the minister, because only the minister can speak to the issue of government policy that underlies a government bill. The tradition in the Senate has been that we make every effort to accommodate ministers of the Crown because we recognize that they have very special responsibilities. That is the typical circumstance under which we allow a committee to sit, even though the Senate is sitting.

From time to time, a special witness will be required by a committee, and we weigh the circumstances specific to each case.

The committee in question is studying a private bill. We have just heard the argument that some witnesses in the tobacco industry are hard to contact. One can appreciate why that is so with some tobacco executives. However, without getting into the merits of the issue, I do not think that this request meets the test established by the custom and usage in this place.

**Senator Taylor:** Honourable senators, I am pinch-hitting for my chairman, who assured me that she had cleared this with her side, but she said that last time, too.

We gave notice of this motion yesterday and I was under the impression that the Deputy Leader of the Opposition had approved it. I can only repeat that it is difficult to get witnesses from the tobacco industry to the table. We have to give them a definite time, and we think that 5:30 is quite safe. I do not think this would establish a fatal precedent.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, normally we rise at 6 p.m., although we have been known to not see the clock at times. Perhaps this item could be left on the Order Paper one more day. I will take the opportunity to speak to Senators Taylor, Spivak and Kinsella on this matter.

Honourable senators, I move the adjournment of the debate.

**Hon. John Lynch-Staunton (Leader of the Opposition):** Honourable senators, I wish to make it quite clear that this is an excessive example of the tail wagging the dog. I think we all agree that our main priority is the Senate chamber and that committees must schedule their business around the sitting hours of the chamber.



There are exceptions, as Senator Kinsella pointed out, such as when a minister with a heavy schedule requests a particular time for his or her appearance. However, that is for a government bill. We are talking here about a private bill. I will vote against any motion asking that a committee be allowed to sit while the Senate is sitting in order to consider a private bill.

Honourable senators, we are setting a terrible precedent. I do not care that witnesses may be available only at a certain hour. If they are interested in a bill, they will accommodate the committee's schedule rather than ask the committee to accommodate theirs. How many tails do we need to wag one dog?

**Hon. Jeremiah S. Grafstein:** Honourable senators, I should like to ask the Leader of the Opposition in the Senate for the basis upon which he suggests that a private bill does not have the same status in this chamber as a government bill.

**Senator Lynch-Staunton:** I did not say that.

• (1500)

**Senator Grafstein:** You did.

**Senator Lynch-Staunton:** I did not.

**Senator Grafstein:** Forgive me.

**Senator Lynch-Staunton:** There is no minister asking to appear.

**Senator Grafstein:** Excuse me, but what I heard from the honourable senator was that there should be a separate treatment for a senator's private bill and a government bill, if, in fact, we should accommodate a government bill awaiting the appearance of a minister who has a busy schedule. I drew from that that it was the senator's contention that a private bill has different efficacy and is different from a government bill in terms of treatment in this chamber.

Please bear with me for a moment.

Honourable senators, perhaps I am wrong constitutionally. From custom and practice, I thought the procedure in this place, in terms of time allocation for bills, was that once tabled on first reading, they were to be treated equally. Obviously bills have different time slots and different priorities, but a bill of a senator in this chamber, where each senator is equal, must be treated in a manner based on the priorities set out in our rules, in other words, on an equal basis once in the legislative process. I do not see a differentiation between the two. Perhaps from custom, practice or convention, the honourable senator can tell me if that is different.

**Hon. Lowell Murray:** Honourable senators, let me add a word to the honourable senator's about the rules. We started to make a distinction some years ago. Far be it from me, it is no longer my role, to defend the prerogatives of the government.

**Senator Kinsella:** Go ahead.

**Senator Murray:** However, we put into our rules some years ago that the Orders of the Day be called by the government. The government decides what legislation will be placed before us at a given time, and the government would normally place its own legislation first. Furthermore, the Leader and Deputy Leader of the Government, and the Leader and Deputy Leader of the Opposition, were given official status in our rules, status they had not had previously.

Second, it is the invariable custom, so long as I have been here, that committees, faced with government legislation on the one hand, private bills on the other hand, or policy studies on the third hand, always give priority to government legislation. That is the way it is done. It is not just a matter of custom and tradition. It is now and has been that way since what I like to call the "Robertson" rules were adopted here. Since that time it has been a matter of our rules, as well as of custom and tradition.

**Senator Grafstein:** I do not disagree with anything the honourable senator has said. That is not my point. I understand the rules and priorities, and I understand that the government is entitled to give priority to legislation, particularly legislation that has a general interest. Once the bill is referred to committee, subject to the questions of priorities and the rules, it should be treated on an equal basis. If, in fact, there is an important witness who cannot be accommodated on a private bill by any other means except during the time when the Senate sits, and if the minister can only come at a time that is inconvenient to the Senate but convenient to him, for good and fair and appropriate reasons, why should that be treated any differently? In custom and practice, why should it be any different? A bill presented by a senator should have exactly the same type of treatment, subject to the priorities. I do not understand that and, by the way, I do not agree with it.

**Senator Lynch-Staunton:** Honourable senators, I am not demeaning the importance of private bills. God knows that I have introduced more than one myself, but what I was trying to say, and I will now try to clarify, is that this chamber should not be at the mercy of committee schedules beyond fixed schedules. We should not be at the mercy of the schedules that they want to impose on us, beyond the fixed schedules we have already approved, only to satisfy certain witnesses who can only come at certain hours. Otherwise we may as well go to all the committees and ask when we, as a chamber, can sit. If a bill is important enough, and if we feel strongly enough about this chamber, we can accommodate each other, but the chamber should have priority over committee schedules.

**Senator Grafstein:** I agree with the senator on that point. Perhaps we should adopt what we have always adopted in this chamber, which is the pragmatic rule of case by case.

**Senator Murray:** That is what the honourable senator is doing.

**Senator Grafstein:** In other words, the proponent of a private bill should explain to the chamber that it is a request of necessity. However, with respect to a committee hearing a particular witness or proceeding with a meeting at a particular time, the chamber should decide, as opposed to setting some sort of rule that applies differently for government legislation and for private bills. I think they should be treated case by case, argument by argument, on an equal basis. If that is what the Leader of the Opposition in the Senate is saying, I agree with him.

**Hon. Sharon Carstairs:** Honourable senators, I happen to agree completely with Senator Lynch-Staunton. That is a rarity in this chamber.

**Senator Lynch-Staunton:** You are coming around.

**Senator Carstairs:** I agree that the business of the chamber should take precedence over all other business. If we find ourselves in a situation on occasion where the witness, be it on a private bill or government legislation — and it most frequently happens with government legislation — can only appear at a particular time, then I would support a committee that comes forward and asks for leave to sit to hear that particular witness. However, I will not support a blanket motion to allow people to sit while this chamber may still be sitting, as has been outlined here, two weeks in a row.

On motion of Senator Hays, debate adjourned.

## BUSINESS OF THE SENATE

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, we have a house order to suspend at 3:30. It is slightly before 3:30 now. I should like to move that we suspend the sitting now as if it were 3:30, and return as provided for in the house order for the vote.

**The Hon. the Speaker *pro tempore*:** It is moved that the Senate stand suspended until 5:00 p.m. for the purpose of disposing of all questions on Bill C-2. The bells will ring at 4:45 p.m. At 5:00 p.m. a voice vote will be taken on Senator Nolin's first amendment. If a recorded division is requested, the bells will ring for 30 minutes. The motion was adopted yesterday.

**Senator Kinsella:** Let us try to get that straight.

**Senator Hays:** Honourable senators, I believe it is Senator Beaudoin's amendment that will be voted on first.

**The Hon. the Speaker *pro tempore*:** Is it agreed, honourable senators, that we suspend the Senate until 5:00 p.m.?

**Senator Hays:** Honourable senators, just to clarify, my understanding is that, under the house order, committees will sit while the sitting is suspended. The bells will begin to ring at 4:45 calling senators to the chamber, and there will be a voice vote at 5:00 p.m., beginning with the amendment proposed by Senator Beaudoin. It may be that the voice vote will be adequate, but if not, a standing vote will begin at 5:30, followed by other votes if necessary.

**The Hon. the Speaker *pro tempore*:** It is agreed that we suspend until 5:00. The bells will ring at 4:45 until 5:00 p.m.

**Senator Hays:** What I am looking for from you, Your Honour, is agreement that we will vote on Senator Beaudoin's amendment first.

**The Hon. the Speaker *pro tempore*:** Agreed.

The sitting of the Senate was suspended.

• (1700)

## CANADA ELECTIONS BILL

### THIRD READING

On the Order:

On the motion of the Honourable Senator Hays, seconded by the Honourable Senator Moore, for the third reading of Bill C-2, respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts.

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 375, on page 154,

(a) by replacing line 27 with the following:

“375. (1) A registered party shall, subject to”;

(b) by replacing line 32 with the following:

“registered party shall appoint a person, to be”;

(c) by adding the following after line 36:

“(3) The registration of an electoral district agent is valid

(a) until the appointment of the electoral district agent is revoked by the political party;

(b) until the political party that appointed the electoral district agent is deregistered; or

(c) until the electoral district of the electoral district agent no longer exists as result of a representation order made under section 25 of the *Electoral Boundaries Readjustment Act*;

(4) Outside an election period, the electoral district agent of a registered party is:

(a) responsible for all financial operations of the electoral district association of the party; and



(b) required to submit to the chief agent of the registered party that appointed the person to act as the electoral district agent an annual financial transactions return, in accordance with subsection (5), on the electoral district association's financial transactions.

(5) The annual financial transactions return referred to in subsection (4) must set out

(a) a statement of contributions received by the following classes of contributor: individuals, businesses, commercial organizations, governments, trade unions, corporations without share capital other than trade unions, and unincorporated organizations or associations other than trade unions;

(b) the number of contributors in each class listed in paragraph (a);

(c) subject to paragraph (c.1), the name and address of each contributor in a class listed in paragraph (a) who made contributions of a total amount of more than \$200 to the registered party for its use, either directly or through one of its electoral district associations or a trust fund established for the election of a candidate endorsed by the registered party, and that total amount;

(c.1) in the case of a numbered company that is a contributor referred to in paragraph (c), the name of the chief executive officer or president of that company;

(d) in the absence of information identifying a contributor referred to in paragraph (c) who contributed through an electoral district association, the name and address of every contributor by class referred to in paragraph (a) who made contributions of a total amount of more than \$200 to that electoral district association in the fiscal period to which the return relates, as well as, where the contributor is a numbered company, the name of the chief executive officer or president of that company, as if the contributions had been contributions for the use of the registered party;

(e) a statement of contributions received by the registered party from any of its trust funds;

(f) a statement of the electoral district association's assets and liabilities and any surplus or deficit in accordance with generally accepted accounting principles, including a statement of

(i) disputed claims under section 421, and

(ii) unpaid claims that are, or may be, the subject of an application referred to in subsection 419(1) or section 420;

(g) a statement of the electoral district association's revenues and expenses in accordance with generally accepted accounting principles;

(h) a statement of loans or security received by the electoral district association, including any conditions on them; and

(i) a statement of contributions received by the electoral district association but returned in whole or in part to the contributors or otherwise dealt with in accordance with this Act.

(6) For the purpose of subsection (5), other than paragraph (5)(i), a contribution includes a loan.

(7) The electoral district association shall provide the chief agent of a registered party with the documents referred to in subsection (5) within six months after the end of the fiscal period.”; and

(d) by renumbering subsection (3) as subsection (8) and any cross-references thereto accordingly,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 405, on page 166, by replacing lines 36 and 38 with the following:

“(3) No person, other than a chief agent, or a registered agent or an electoral district agent of a registered party, shall accept contributions to a registered party.

(4) No person, other than a chief agent of a registered party, shall provide official receipts to contributors of monetary contributions to a registered party for the purpose of subsection 127(3) of the Income Tax Act.”,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 424, on page 174, by replacing lines 14 to 16 with the following:

“(a) the financial transactions returns, substantially in the prescribed form, on the financial transactions of both the registered party and of the registered party's electoral district associations;”,

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 426,

(a) on page 176, by replacing lines 36 to 38 with the following:

"shall report to its chief agent on both its financial transactions return and trust fund return referred to in section 428, and on the annual financial transactions returns on the electoral district associations' financial transactions referred to in paragraph 375(4)(b), and shall make any"; and

(b) on page 177,

(i) by replacing line 11 with the following:

"electoral district agents, registered agents and officers of the regis-", and

(ii) by replacing line 20 with the following:

"electoral district agents, registered agents and officers of the party to",

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 473, on page 202, by replacing lines 37 and 38 with the following:

"registered party or to a registered agent of that registered party in the",

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 477, on page 203, by replacing lines 30 to 31 with the following:

"477. A candidate, his or her official agent, and the chief agent of a registered party, as the case may be, shall use the prescribed forms for",

And on the motion in amendment of the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, P.C., that Bill C-2 be not now read a third time but that it be amended, in clause 560, on page 246,

(a) by replacing line 18 with the following:

"ceipt with the Minister, signed by the chief agent or a registered"; and

(b) by replacing line 25 with the following:

"(a) by the chief agent or a registered agent of a registered";

And on the motion in amendment of the Honourable Senator Beaudoin, seconded by the Honourable Senator Keon, that Bill C-2 be not now read a third time but that it be amended, in clause 18.1, on page 13, by replacing lines 12 and 13 with the following:

"committee of the Senate and the committee of the House of Commons that normally considers electoral matters, or by the joint committee of both Houses of Parliament designated or established for that purpose."

**The Hon. the Speaker:** Honourable senators, there was an agreement on May 18 that all the questions needed to dispose of the third reading of Bill C-2 would take place today, with the Senate called at five o'clock, and that the bells would ring for 30 minutes.

Yesterday, we had a further discussion, and it appeared then that the vote would take place at 5:30 without the necessity of the bells ringing for 30 minutes. Do we have agreement, as there will be no debate on any of the amendments, that the vote will be at 5:30?

**Some Hon. Senators:** Agreed.

**Senator Kinsella:** Let's do it now.

**The Hon. the Speaker:** Honourable senators, all we are dealing with at this point are voice votes.

The voice vote on the motion in amendment proposed by Senator Beaudoin has been disposed of and a standing vote has been called for 5:30. There are seven motions in amendment from Senator Nolin. Is there any disposition to deal with the seven motions in amendment at once, or is it the wish of the Senate to deal with each of them separately?

**Senator Kinsella:** One vote.

**The Hon. the Speaker:** Is that satisfactory, Senator Nolin?

**Hon. Pierre Claude Nolin:** Yes.

**The Hon. the Speaker:** It was moved by the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme, that Bill C-2 be not now read a third time but that it be amended —

**An Hon. Senator:** Dispense!

**The Hon. the Speaker:** Shall I dispense with all seven motions in amendment?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Is it your pleasure, honourable senators, to adopt Senator Nolin's motions in amendment?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** Will those honourable senators in favour of the motions in amendment please say "yea"?



**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motions in amendment please say "nay"?

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

*And two honourable senators having risen.*

**The Hon. the Speaker:** Honourable senators, the standing vote is deferred until 5:30 p.m.

We are now back to the main motion. We have agreed to have a standing vote on Senator Beaudoin's motion in amendment. We have agreed to have a standing vote on Senator Nolin's motions in amendment. I can defer the vote on the main motion until we dispose of those, if honourable senators wish. Would you prefer it that way?

**Hon. Senators:** Agreed.

**The Hon. the Speaker:** Then we are back to the Order Paper.

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, when we suspended the sitting at approximately 3:15 p.m., we had completed our work. It was agreed at that point with the Speaker *pro tempore* in the chair that we would suspend the sitting until now. Accordingly, I suggest that we continue with a suspended sitting but that we ring the bells for a vote at 5:30.

**The Hon. the Speaker:** Very well. The bells will ring and the votes will be held at 5:30.

Call in the senators.

• (1730)

**The Hon. the Speaker:** Honourable senators, the question before the Senate is the third reading of Bill C-2. The first vote is on the amendment proposed by the Honourable Senator Beaudoin, seconded by the Honourable Senator Keon, that Bill C-2 be not now read a third time but that it be amended in clause 18.1, on page 13, by replacing lines 12 and 13 with the following:

**An Hon. Senator:** Dispense!

Motion in amendment of Senator Beaudoin negated on the following division:

## YEAS

### THE HONOURABLE SENATORS

Andreychuk	Johnson
Beaudoin	Keon
Bolduc	Kinsella
Buchanan	LeBreton
Cogger	Lynch-Staunton
Cohen	Murray
Comeau	Nolin
DeWare	Robertson
Doody	Roche
Forrestall	Rossiter
Grimard	Simard
Gustafson	Stratton—24

## NAYS

### THE HONOURABLE SENATORS

Adams	Graham
Bacon	Hays
Banks	Hervieux-Payette
Boudreau	Joyal
Bryden	Kirby
Callbeck	Kroft
Carstairs	Losier-Cool
Chalifoux	Mercier
Christensen	Milne
Cook	Pépin
Cools	Perrault
Corbin	Perry Poirier
De Bané	Poy
Fairbairn	Robichaud
Ferretti Barth	(L'Acadie-Acadia)
Finestone	Robichaud
Finnerty	(Saint-Louis-de-Kent)
Fitzpatrick	Rompkey
Fraser	Sibbeston
Gauthier	Taylor
Gill	Watt
Grafstein	Wiebe—42

## ABSTENTIONS

### THE HONOURABLE SENATORS

Nil

**The Hon. the Speaker:** Honourable senators, the question now before the Senate is on the seven amendments proposed by the Honourable Senator Nolin, seconded by the Honourable Senator Prud'homme. Shall I dispense?

**Hon. Senators:** Dispense.

**The Hon. the Speaker:** Those honourable senators in favour of the seven motions in amendment will please say "yea"?

**Some Hon. Senators:** Yea.

**The Hon. the Speaker:** Will those honourable senators opposed to the motions in amendment please say "nay"? [English]

**Some Hon. Senators:** Nay.

**The Hon. the Speaker:** In my opinion, the "nays" have it.

**Senator Kinsella:** On division.

**The Hon. the Speaker:** Honourable senators, we are back to the main motion. It was moved by the Honourable Hays, seconded by the Honourable Senator Moore, that Bill C-2, respecting the election of members to the House of Commons, repealing other acts relating to elections, and making consequential amendments to other acts, be now read a third time.

Is it your pleasure, honourable senators, to adopt the motion?

**Some Hon. Senators:** Yes.

**Some Hon. Senators:** No.

**The Hon. the Speaker:** In my opinion, the "yeas" have it.

**Senator Kinsella:** On division.

Motion agreed to and bill read third time and passed, on division.

[Translation]

## ROYAL ASSENT

### NOTICE

**The Hon. the Speaker** informed the Senate that the following communication had been received:

### RIDEAU HALL

May 31, 2000

Mr. Speaker,

I have the honour to inform you that the Honourable John Major, Puisne Judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, will proceed to the Senate Chamber today, the 31st day of May, 2000, at 6:15 p.m. for the purpose of giving Royal Assent to certain bills.

Yours sincerely,

Anthony P. Smith  
Deputy Secretary  
Policy, Program and Protocol

The Honourable  
The Speaker of the Senate  
Ottawa

**Hon. Dan Hays (Deputy Leader of the Government):** Honourable senators, I would move that the session be suspended until 6:10 in anticipation of receiving the representative of her excellency at 6:15.

**The Hon. the Speaker:** Is it agreed, honourable senators?

**Hon. Senators:** Agreed.

The Senate adjourned during pleasure.

[Translation]

• (1830)

## ROYAL ASSENT

The Honourable John C. Major, Puisne judge of the Supreme Court of Canada, in his capacity as Deputy Governor General, having come and being seated at the foot of the Throne, and the House of Commons having been summoned, and being come with their Deputy Speaker, the Honourable the Speaker of the Senate said:

I have the honour to inform you that Her Excellency the Governor General has been pleased to cause Letters Patent to be issued under her Sign Manual and Signet constituting the Honourable John C. Major, Puisne Judge of the Supreme Court of Canada, her Deputy, to do in Her Excellency's name all acts on her part necessary to be done during Her Excellency's pleasure.

*The Commission was read by a Clerk at the Table.*

The Honourable the Deputy Governor General was pleased to give the Royal Assent to the following bills:

An Act to amend the Municipal Grants Act (*Bill C-10, Chapter 8, 2000*)

An Act respecting the election of members to the House of Commons, repealing other Acts relating to elections and making consequential amendments to other Acts (*Bill C-2, Chapter 9, 2000*)

The House of Commons withdrew.

The Honourable the Deputy Governor General was pleased to retire.

The sitting of the Senate was resumed.

The Senate adjourned until tomorrow at 2:00 p.m.



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